

AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1044

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Sections *1569.651, 1569.682, 1569.80, 1770, 1771, 1771.7, 1776.3, 1777.2, and 1788* of, to add Section *1770.5* *1771.8, 1776, 1776.2, 1776.3, 1776.6, 1777.2, 1779, 1779.4, 1779.6, 1781, 1783.3, 1785, 1788, 1788.4, 1789, 1789.4, 1790, 1792.2, 1792.3, 1792.4, 1792.5, 1792.6, 1792.7, 1792.8, 1792.10, 1793, 1793.6, 1793.7, 1793.8, 1793.13, 1793.21, 1793.23, 1793.31, 1793.50, 1793.58, 1793.60, and 1793.62* of, to add Sections *1770.5, 1777.5, 1789.15, 1791.5, 1793.32, 1793.33, 1793.34, 1793.35, and 1793.36* to, and to repeal and add Section 1778 of, the Health and Safety Code, and to amend Sections *14006.01 and 14139.3* of the Welfare and Institutions Code, relating to continuing care retirement, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1044, as amended, Jones. Continuing care retirement communities: contracts.

(1) Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care

retirement community for the duration of the resident's life or a term in excess of one year.

This bill would transfer that responsibility, except with respect to oversight and regulation of programs and services provided directly to residents of the communities, to the Department of Insurance and would make related conforming changes.

The bill would require, by not later than January 1, 2011, the Insurance Commissioner, *the* State Public Health Officer, and the Director of Social Services to jointly develop and adopt regulations regarding standards, staff training, policies, and procedures to ensure maximum coordination and consistency of implementation of the transfer required by the bill.

(2) Existing law establishes the Continuing Care Provider Fee Fund, which is continuously appropriated to the State Department of Social Services for purposes of administering the continuing care retirement community requirements of existing law.

This bill would, for purposes of administering the above provisions, create 2 accounts within the fund, the Insurance Account, which would be continuously appropriated to the Department of Insurance, and the State Department of Social Services Account, which would be continuously appropriated to the State Department of Social Services. Ninety-five percent of fees collected pursuant to the above-described provisions would be deposited into the Insurance Account and 5% into the State Department of Social Services Account.

(3) *Existing law requires insurers to comply with various requirements.*

This bill would require the Insurance Commissioner to apply certain of those requirements to continuing care retirement communities and contracts, including requirements related to the disclosure of material transactions and requirements related to provider holding company systems, as defined.

The bill would additionally revise and recast other provisions applicable to continuing care retirement communities and contracts, including, among other things, requirements relating to application contents, increases in monthly care fees, dividends and distributions, reserve requirements, disclosure of beneficial ownership of a provider, and personal interests of officers of a provider.

The bill would enact other related provisions.

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) California is home to nearly four million people over 65
4 years of age; the largest older adult population in the nation. This
5 number is expected to more than double over the next several
6 decades as the baby boomers begin reaching this milestone.

7 (b) Continuing care retirement communities are an alternative
8 for the long-term residential, social, and health care needs of
9 California's elderly residents and seek to provide a continuum of
10 care, minimize transfer trauma, and allow services to be provided
11 in an appropriately licensed setting.

12 (c) Because elderly residents often both expend a significant
13 portion of their savings in order to purchase care in a continuing
14 care retirement community and expect to receive care at their
15 continuing care retirement community for the rest of their lives,
16 tragic consequences can result if a continuing care provider
17 becomes insolvent or unable to provide responsible care.

18 (d) The Legislature has recognized the importance of continuing
19 care provider solvency and the need for disclosure concerning the
20 terms of agreements made between prospective residents and the
21 continuing care provider, and concerning the operations of the
22 continuing care retirement community.

23 (e) The Legislature defines continuing care contracts in terms
24 of a promise of the future provision of services which are analogous
25 to insurance products.

26 (f) Continuing care retirement communities have long-term
27 obligations and may have a corporate or capital structure similar
28 to insurance holding company systems, as defined in the Insurance
29 Code.

30 (g) Therefore, it is the intent of the Legislature to transfer general
31 regulatory responsibility for continuing care retirement
32 communities, except for oversight and regulation of programs and
33 services provided directly to residents of the communities, from
34 the Department of Social Services to the Department of Insurance.

35 *SEC. 2. Section 1569.651 of the Health and Safety Code is*
36 *amended to read:*

37 1569.651. (a) A licensee of a residential care facility for the
38 elderly shall not require any form of preadmission fee or deposit

1 from a recipient under the State Supplementary Program for the
2 Aged, Blind and Disabled (Article 5 (commencing with Section
3 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and
4 Institutions Code) who applies for admission to the facility.

5 (b) If a licensee charges a preadmission fee, the licensee shall
6 provide the applicant or his or her representative with a written
7 general statement describing all costs associated with the
8 preadmission fee charges and stating that the preadmission fee is
9 refundable. The statement shall describe the conditions for the
10 refund as specified in subdivision (g). A licensee shall only charge
11 a single preadmission fee as defined in subdivision (e) per resident
12 admission.

13 (c) A licensee of a residential care facility for the elderly shall
14 not require, request, or accept any funds from a resident or a
15 resident's representative that constitutes a deposit against any
16 possible damages by the resident.

17 (d) Any fee charged by a licensee of a residential care facility
18 for the elderly, whether prior to or after admission, shall be clearly
19 specified in the admission agreement.

20 (e) For the purposes of this section, "preadmission fee" means
21 an application fee, processing fee, admission fee, entrance fee,
22 community fee, or other fee, however designated, that is requested
23 or accepted by a licensee of a residential care facility for the elderly
24 prior to admission.

25 (f) This section shall not apply to licensees of residential care
26 facilities for the elderly that have obtained a certificate of authority
27 to offer continuing care contracts, as defined in paragraph ~~(8)~~ (9)
28 of subdivision (c) of Section 1771.

29 (g) If the applicant decides not to enter the facility prior to the
30 facility's completion of a preadmission appraisal or if the facility
31 fails to provide full written disclosure of the preadmission fee
32 charges and refund conditions, the applicant or the applicant's
33 representative shall be entitled to a refund of 100 percent of the
34 preadmission fee.

35 (h) Unless subdivision (g) applies, preadmission fees in excess
36 of five hundred dollars (\$500) shall be refunded according to the
37 following:

38 (1) If the applicant does not enter the facility after a
39 preadmission appraisal is conducted, the applicant or the
40 applicant's representative shall be entitled to a refund of at least

1 80 percent of the preadmission fee amount in excess of five
2 hundred dollars (\$500).

3 (2) If the resident leaves the facility for any reason during the
4 first month of residency, the resident shall be entitled to a refund
5 of at least 80 percent of the preadmission fee amount in excess of
6 five hundred dollars (\$500).

7 (3) If the resident leaves the facility for any reason during the
8 second month of residency, the resident shall be entitled to a refund
9 of at least 60 percent of the preadmission fee amount in excess of
10 five hundred dollars (\$500).

11 (4) If the resident leaves the facility for any reason during the
12 third month of residency, the resident shall be entitled to a refund
13 of at least 40 percent of the preadmission fee amount in excess of
14 five hundred dollars (\$500).

15 (5) The facility may, but is not required to, make a refund of
16 the preadmission fee for residents living in the facility for four or
17 more months.

18 (i) (1) Notwithstanding subdivision (g), if a resident is evicted
19 by a facility pursuant to subdivision (a) of Section 1569.682, the
20 resident or the resident's legal representative shall be entitled to a
21 refund of preadmission fees in excess of five hundred dollars
22 (\$500) in accordance with all of the following:

23 (A) A 100-percent refund if preadmission fees were paid within
24 six months of notice of eviction.

25 (B) A 75-percent refund if preadmission fees were paid more
26 than six months but not more than 12 months before notice of
27 eviction.

28 (C) A 50-percent refund if preadmission fees were paid more
29 than 12 months but not more than 18 months before notice of
30 eviction.

31 (D) A 25-percent refund if preadmission fees were paid more
32 than 18 months but less than 25 months before notice of eviction.

33 (2) No preadmission refund is required if preadmission fees
34 were paid 25 months or more before the notice of eviction.

35 (3) The preadmission refund required by this subdivision shall
36 be paid within 15 days of issuing the eviction notice.

37 *SEC. 3. Section 1569.682 of the Health and Safety Code is*
38 *amended to read:*

39 1569.682. (a) A licensee of a licensed residential care facility
40 for the elderly shall, prior to transferring a resident of the facility

1 to another facility or to an independent living arrangement as a
2 result of the forfeiture of a license, as described in subdivision (a),
3 (b), or (f) of Section 1569.19 or change of use of the facility
4 pursuant to the department's regulations, take all reasonable steps
5 to transfer affected residents safely and to minimize possible
6 transfer trauma, and shall, at a minimum, do all of the following:

7 (1) Prepare, for each resident, a relocation evaluation of the
8 needs of that resident, which shall include both of the following:

9 (A) Recommendations on the type of facility that would meet
10 the needs of the resident based on the current service plan.

11 (B) A list of facilities, within a 60-mile radius of the resident's
12 current facility, that meet the resident's present needs.

13 (2) Provide each resident or the resident's responsible person
14 with a written notice no later than 60 days before the intended
15 eviction. The notice shall include all of the following:

16 (A) The reason for the eviction, with specific facts to permit a
17 determination of the date, place, witnesses, and circumstances
18 concerning the reasons.

19 (B) A copy of the resident's current service plan.

20 (C) The relocation evaluation.

21 (D) A list of referral agencies.

22 (E) The right of the resident or resident's legal representative
23 to contact the department to investigate the reasons given for the
24 eviction pursuant to Section 1569.35.

25 (3) Discuss the relocation evaluation with the resident and his
26 or her legal representative within 30 days of issuing the notice of
27 eviction.

28 (4) Submit a written report of any eviction to the licensing
29 agency within five days.

30 (5) Upon issuing the written notice of eviction, a licensee shall
31 not accept new residents or enter into new admission agreements.

32 (6) (A) For paid preadmission fees in excess of five hundred
33 dollars (\$500), the resident is entitled to a refund in accordance
34 with all of the following:

35 (i) A 100-percent refund if preadmission fees were paid within
36 six months of notice of eviction.

37 (ii) A 75-percent refund if preadmission fees were paid more
38 than six months but not more than 12 months before notice of
39 eviction.

1 (iii) A 50-percent refund if preadmission fees were paid more
2 than 12 months but not more than 18 months before notice of
3 eviction.

4 (iv) A 25-percent refund if preadmission fees were paid more
5 than 18 months but less than 25 months before notice of eviction.

6 (B) No preadmission refund is required if preadmission fees
7 were paid 25 months or more before the notice of eviction.

8 (C) The preadmission refund required by this paragraph shall
9 be paid within 15 days of issuing the eviction notice. In lieu of the
10 refund, the resident may request that the licensee provide a credit
11 toward the resident's monthly fee obligation in an amount equal
12 to the preadmission fee refund due.

13 (7) If the resident gives notice five days before leaving the
14 facility, the licensee shall refund to the resident or his or her legal
15 representative a proportional per diem amount of any prepaid
16 monthly fees at the time the resident leaves the facility and the
17 unit is vacated. Otherwise the licensee shall pay the refund within
18 seven days from the date that the resident leaves the facility and
19 the unit is vacated.

20 (8) Within 10 days of all residents having left the facility, the
21 licensee, based on information provided by the resident or
22 resident's legal representative, shall submit a final list of names
23 and new locations of all residents to the department and the local
24 ombudsperson program.

25 (b) If seven or more residents of a residential care facility for
26 the elderly will be transferred as a result of the forfeiture of a
27 license or change in the use of the facility pursuant to subdivision
28 (a), the licensee shall submit a proposed closure plan to the
29 department for approval. The department shall approve or
30 disapprove the closure plan, and monitor its implementation, in
31 accordance with the following requirements:

32 (1) Upon submission of the closure plan, the licensee shall be
33 prohibited from accepting new residents and entering into new
34 admission agreements for new residents.

35 (2) The closure plan shall meet the requirements described in
36 subdivision (a), and describe the staff available to assist in the
37 transfers. The department's review shall include a determination
38 as to whether the licensee's closure plan contains a relocation
39 evaluation for each resident.

1 (3) Within 15 working days of receipt, the department shall
2 approve or disapprove the closure plan prepared pursuant to this
3 subdivision, and, if the department approves the plan, it shall
4 become effective upon the date the department grants its written
5 approval of the plan.

6 (4) If the department disapproves a closure plan, the licensee
7 may resubmit an amended plan, which the department shall
8 promptly either approve or disapprove, within 10 working days
9 of receipt by the department of the amended plan. If the department
10 fails to approve a closure plan, it shall inform the licensee, in
11 writing, of the reasons for the disapproval of the plan.

12 (5) If the department fails to take action within 20 working days
13 of receipt of either the original or the amended closure plan, the
14 plan, or amended plan, as the case may be, shall be deemed
15 approved.

16 (6) Until such time that the department has approved a licensee's
17 closure plan, the facility shall not issue a notice of transfer or
18 require any resident to transfer.

19 (7) Upon approval by the department, the licensee shall send a
20 copy of the closure plan to the local ombudsperson program.

21 (c) (1) If a licensee fails to comply with the requirements of
22 subdivision (a), and if the director determines that it is necessary
23 to protect the residents of a facility from physical or mental abuse,
24 abandonment, or any other substantial threat to health or safety,
25 the department shall take any necessary action to minimize trauma
26 for the residents. The department shall contact any local agency
27 that may have placement or advocacy responsibility for the
28 residents, and shall work with those agencies to locate alternative
29 placement sites, contact relatives or other persons responsible for
30 the care of these residents, provide onsite evaluation of the
31 residents, and assist in the transfer of residents.

32 (2) The participation of the department and local agencies in
33 the relocation of residents from a residential care facility for the
34 elderly shall not relieve the licensee of any responsibility under
35 this section. A licensee that fails to comply with the requirements
36 of this section shall be required to reimburse the department and
37 local agencies for the cost of providing the relocation services. If
38 the licensee fails to provide the relocation services required in
39 subdivisions (a) and (b), then the department may request that the
40 Attorney General's office, the city attorney's office, or the local

1 district attorney's office seek injunctive relief and damages in the
2 same manner as provided for in Chapter 5 (commencing with
3 Section 17200) of Part 2 of Division 7 of the Business and
4 Professions Code.

5 (d) A licensee who fails to comply with requirements of this
6 section shall be liable for the imposition of civil penalties in the
7 amount of one hundred dollars (\$100) per violation per day for
8 each day that the licensee is in violation of this section, until such
9 time that the violation has been corrected. The civil penalties shall
10 be issued immediately following the written notice of violation.
11 However, if the violation does not present an immediate or
12 substantial threat to the health or safety of residents and the licensee
13 corrects the violation within three days after receiving the notice
14 of violation, the licensee shall not be liable for payment of any
15 civil penalties pursuant to this subdivision related to the corrected
16 violation.

17 (e) A resident of a residential care facility for the elderly covered
18 under this section, may bring a civil action against any person,
19 firm, partnership, or corporation who owns, operates, establishes,
20 manages, conducts, or maintains a residential care facility for the
21 elderly who violates the rights of a resident, as set forth in this
22 section. Any person, firm, partnership, or corporation who owns,
23 operates, establishes, manages, conducts, or maintains a residential
24 care facility for the elderly who violates this section shall be
25 responsible for the acts of the facility's employees and shall be
26 liable for costs and attorney fees. Any such residential care facility
27 for the elderly may also be enjoined from permitting the violation
28 to continue. The remedies specified in this section shall be in
29 addition to any other remedy provided by law.

30 (f) This section does not apply to a licensee that has obtained a
31 certificate of authority to offer continuing care contracts, as defined
32 in paragraph-(8) (9) of subdivision (c) of Section 1771.

33 *SEC. 4. Section 1569.80 of the Health and Safety Code is*
34 *amended to read:*

35 1569.80. (a) A resident of a residential care facility for the
36 elderly, or the resident's representative, or both, shall have the
37 right to participate in decisionmaking regarding the care and
38 services to be provided to the resident. Accordingly, prior to, or
39 within two weeks after, the resident's admission, the facility shall
40 coordinate a meeting with the resident and the resident's

1 representative, if any, an appropriate member or members of the
2 facility's staff, if the resident is receiving home health services in
3 the facility, a representative of the home health agency involved,
4 and any other appropriate parties. The facility shall ensure that
5 participants in the meeting prepare a written record of the care the
6 resident will receive in the facility, and the resident's preferences
7 regarding the services provided at the facility.

8 (b) Once prepared, the written record described in subdivision
9 (a) shall be used by the facility, and, if applicable pursuant to
10 Section 1569.725, the home health agency, to determine the care
11 and services provided to the resident. If the resident has a regular
12 physician, the written record shall be sent by the facility to that
13 physician.

14 (c) The written record described in subdivision (a) shall be
15 reviewed, and, if necessary, revised, at least once every 12 months,
16 or upon a significant change in the resident's condition, as defined
17 by regulations, whichever occurs first. The review shall take place
18 at a meeting coordinated by the facility, and attended by the
19 resident, the resident's representative, if any, an appropriate
20 member or members of the facility's staff, and, if the resident is
21 receiving home health services in the facility, a representative from
22 the home health agency involved.

23 (d) This section shall not preclude a residential care facility for
24 the elderly or home health agency from satisfying other state or
25 federal obligations at a meeting required by subdivision (a) or (c).

26 (e) If the residential care facility for the elderly is a continuing
27 care retirement community, as defined in paragraph ~~(10)~~ (12) of
28 subdivision (c) of Section 1771, this section shall apply only to
29 residents who require care and supervision, as defined in
30 subdivision (b) of Section 1569.2.

31 ~~SEC. 2.~~

32 *SEC. 5.* Section 1770 of the Health and Safety Code is amended
33 to read:

34 1770. The Legislature finds, declares, and intends all of the
35 following:

36 (a) Continuing care retirement communities are an alternative
37 for the long-term residential, social, and health care needs of
38 California's elderly residents and seek to provide a continuum of
39 care, minimize transfer trauma, and allow services to be provided
40 in an appropriately licensed setting.

1 (b) Because elderly residents often both expend a significant
2 portion of their savings in order to purchase care in a continuing
3 care retirement community and expect to receive care at their
4 continuing care retirement community for the rest of their lives,
5 tragic consequences can result if a continuing care provider
6 becomes insolvent or unable to provide responsible care.

7 (c) There is a need for disclosure concerning the terms of
8 agreements made between prospective residents and the continuing
9 care provider, and concerning the operations of the continuing care
10 retirement community.

11 (d) Providers of continuing care should be required to obtain a
12 certificate of authority to enter into continuing care contracts and
13 should be monitored and regulated by the Department of Insurance.

14 (e) This chapter applies equally to for-profit and nonprofit
15 provider entities.

16 (f) This chapter states the minimum requirements to be imposed
17 upon any entity offering or providing continuing care.

18 (g) Because the authority to enter into continuing care contracts
19 granted by the Department of Insurance is neither a guarantee of
20 performance by the providers nor an endorsement of any continuing
21 care contract provisions, prospective residents must carefully
22 consider the risks, benefits, and costs before signing a continuing
23 care contract and should be encouraged to seek financial and legal
24 advice before doing so.

25 ~~SEC. 3.~~

26 *SEC. 6.* Section 1770.5 is added to the Health and Safety Code,
27 to read:

28 1770.5. (a) The Department of Insurance shall succeed to and
29 be vested with all the duties, powers, purposes, functions,
30 responsibilities, and jurisdiction of the State Department of Social
31 Services described in this chapter, except for oversight and
32 regulation of programs and services provided directly to residents
33 ~~of the communities. The Department of Insurance shall create a~~
34 ~~Continuing Care Contracts Branch which shall succeed to and be~~
35 ~~vested with the duties, powers, functions, responsibilities, and~~
36 ~~jurisdiction of the former Continuing Care Contracts Branch in~~
37 ~~the State Department of Social Services.~~ *of continuing care*
38 *retirement communities.*

39 (b) All regulations, orders, and guidelines adopted pursuant to
40 this chapter by the State Department of Social Services, ~~including~~

1 ~~the former Continuing Care Contracts Branch in the State~~
2 ~~Department of Social Services~~, and any of its predecessors in effect
3 immediately preceding the operative date of this section shall
4 remain in effect and shall be fully enforceable unless and until
5 readopted, amended, or repealed, or until they expire by their own
6 terms.

7 (c) Any action by or against the State Department of Social
8 Services pertaining to matters vested in the State Department of
9 Social Services by this chapter *that are transferred to the*
10 *Department of Insurance pursuant to this section* shall not abate
11 but shall continue in the name of the Department of Insurance, and
12 the Department of Insurance shall be substituted for the State
13 Department of Social Services and any of its predecessors by the
14 court wherein the action is pending. The substitution shall not in
15 any way affect the rights of the parties to the action. This
16 substitution shall not be construed to affect the continuing
17 responsibility of the State Department of Social Services to provide
18 oversight and regulation of programs and services provided directly
19 to residents of the communities.

20 (d) All books, documents, records, and property of the State
21 Department of Social Services pertaining to functions transferred
22 to the Department of Insurance pursuant to this section shall be
23 transferred to the Department of Insurance.

24 (e) All unexpended balances of appropriations and other funds
25 available for use in connection with any function or the
26 administration of any law transferred to the Department of
27 Insurance pursuant to this section shall be transferred to the
28 Department of Insurance for use for the purpose for which the
29 appropriation was originally made or the funds were originally
30 available. If there is any doubt as to where those balances and
31 funds are transferred, the Department of Finance shall determine
32 where the balances and funds are transferred.

33 (f) No contract, lease, license, or any other agreement to which
34 the State Department of Social Services is a party pursuant to this
35 chapter shall be void or voidable by reason of this section, but
36 shall continue in full force and effect, with the Department of
37 Insurance assuming all of the rights, obligations, and duties of the
38 State Department of Social Services under this chapter. That
39 assumption by the Department of Insurance shall not in any way

1 affect the rights of the parties to the contract, lease, license, or
2 agreement.

3 (g) Every officer and employee of the State Department of Social
4 Services who is performing a function transferred to the
5 Department of Insurance pursuant to this section and who is serving
6 in the state civil service, other than as a temporary employee, shall
7 be transferred to the Department of Insurance pursuant to the
8 provisions of Section 19050.9 of the Government Code. The status,
9 position, and rights of these officers and employees shall not be
10 affected by the transfer and shall be retained by the person as an
11 officer or employee of the Department of Insurance, as the case
12 may be, pursuant to the State Civil Service Act (Part 2
13 (commencing with Section 18500) of Division 5 of Title 2 of the
14 Government Code), except as to a position that is exempt from
15 civil service.

16 (h) The commissioner shall review the requirements of this
17 chapter and make recommendations to the Legislature as he or she
18 deems necessary to improve the oversight and regulation of the
19 financial management of continuing care retirement communities
20 to protect consumers who enter into continuing care contracts.

21 (i) No later than January 1, 2011, the Insurance Commissioner,
22 the State Public Health Officer, and the Director of Social Services
23 shall jointly develop and adopt regulations regarding standards,
24 staff training, policies, and procedures to ensure maximum
25 coordination and consistency of implementation of the transfers
26 required by this section.

27 **SEC. 4.**

28 *SEC. 7.* Section 1771 of the Health and Safety Code is amended
29 to read:

30 1771. Unless the context otherwise requires, the definitions in
31 this section govern the interpretation of this chapter.

32 ~~(a) (1) "Affiliate" means any person, corporation, limited~~
33 ~~liability company, business trust, trust, partnership, unincorporated~~
34 ~~association, or other legal entity that directly or indirectly controls,~~
35 ~~is controlled by, or is under common control with, a provider or~~
36 ~~applicant.~~

37 *(a) (1) An "affiliate" of, or person "affiliated" with, a specific*
38 *person, is a person that directly, or indirectly, through one or more*
39 *intermediaries, controls, is controlled by, or is under common*
40 *control with, the person specified.*

1 (2) “Affinity group” means a grouping of entities sharing a
2 common interest, philosophy, or connection (e.g., military officers,
3 religion).

4 (3) “Annual report” means the report each provider is required
5 to file annually with the department, as described in Section 1790.

6 (4) “Applicant” means any entity, or combination of entities,
7 that submits and has pending an application to the department for
8 a permit to accept deposits and a certificate of authority.

9 (5) “Assisted living services” includes, but is not limited to,
10 assistance with personal activities of daily living, including
11 dressing, feeding, toileting, bathing, grooming, mobility, and
12 associated tasks, to help provide for and maintain physical and
13 psychosocial comfort.

14 (6) “Assisted living unit” means the living area or unit within
15 a continuing care retirement community that is specifically
16 designed to provide ongoing assisted living services.

17 (7) “Audited financial statement” means financial statements
18 prepared in accordance with generally accepted accounting
19 principles including the opinion of an independent certified public
20 accountant, and notes to the financial statements considered
21 customary or necessary to provide full disclosure and complete
22 information regarding the provider’s financial statements, financial
23 condition, and operation.

24 (b) (reserved)

25 (c) (1) “Cancel” means to destroy the force and effect of an
26 agreement or continuing care contract.

27 (2) “Cancellation period” means the 90-day period, beginning
28 when the resident physically moves into the continuing care
29 retirement community, during which the resident may cancel the
30 continuing care contract, as provided in Section 1788.2.

31 (3) “Care” means nursing, medical, or other health related
32 services, protection or supervision, assistance with the personal
33 activities of daily living, or any combination of those services.

34 (4) “Cash equivalent” means certificates of deposit and United
35 States treasury securities with a maturity of five years or less.

36 (5) “Certificate” or “certificate of authority” means the
37 certificate issued by the department, properly executed and bearing
38 the State Seal, authorizing a specified provider to enter into one
39 or more continuing care contracts at a single specified continuing
40 care retirement community.

1 (6) “Commissioner” means the Insurance Commissioner.

2 (7) “Condition” means a restriction, specific action, or other
3 requirement imposed by the department for the initial or continuing
4 validity of a permit to accept deposits, a provisional certificate of
5 authority, or a certificate of authority. A condition may limit the
6 circumstances under which the provider may enter into any new
7 deposit agreement or contract, or may be imposed as a condition
8 precedent to the issuance of a permit to accept deposits, a
9 provisional certificate of authority, or a certificate of authority.

10 (8) “Consideration” means some right, interest, profit, or benefit
11 paid, transferred, promised, or provided by one party to another
12 as an inducement to contract. Consideration includes some
13 forbearance, detriment, loss, or responsibility, that is given,
14 suffered, or undertaken by a party as an inducement to another
15 party to contract.

16 (9) “Continuing care contract” means a contract that includes
17 a continuing care promise made, in exchange for an entrance fee,
18 the payment of periodic charges, or both types of payments. A
19 continuing care contract may consist of one agreement or a series
20 of agreements and other writings incorporated by reference.

21 (10) “Continuing care advisory committee” means an advisory
22 panel appointed pursuant to Section 1777.

23 (11) “Continuing care promise” means a promise, expressed or
24 implied, by a provider to provide one or more elements of care to
25 an elderly resident for the duration of his or her life or for a term
26 in excess of one year. Any such promise or representation, whether
27 part of a continuing care contract, other agreement, or series of
28 agreements, or contained in any advertisement, brochure, or other
29 material, either written or oral, is a continuing care promise.

30 (12) “Continuing care retirement community” means a facility
31 located within the State of California where services promised in
32 a continuing care contract are provided. A distinct phase of
33 development approved by the department may be considered to
34 be the continuing care retirement community when a project is
35 being developed in successive distinct phases over a period of
36 time. When the services are provided in residents’ own homes, the
37 homes into which the provider takes those services are considered
38 part of the continuing care retirement community.

39 (13) “Control” means directing or causing the direction of the
40 financial management or the policies of another entity, including

1 an operator of a continuing care retirement community, whether
2 by means of the controlling entity's ownership interest, contract,
3 or any other involvement. A parent entity or sole member of an
4 entity controls a subsidiary entity provider for a continuing care
5 retirement community if its officers, directors, or agents directly
6 participate in the management of the subsidiary entity or in the
7 initiation or approval of policies that affect the continuing care
8 retirement community's operations, including, but not limited to,
9 approving budgets or the administrator for a continuing care
10 retirement community. *Control shall be presumed to exist if any*
11 *person, directly or indirectly, owns, controls, holds with the power*
12 *to vote, or holds proxies representing, more than 10 percent of the*
13 *voting securities of any other person. This presumption may be*
14 *rebutted by a showing that control does not exist in fact. The*
15 *commissioner may, after furnishing all persons in interest notice*
16 *and opportunity to be heard, determine that control exists in fact,*
17 *notwithstanding the absence of a presumption to that effect.*

18 (d) (1) "Department" means the Department of Insurance,
19 ~~except with respect to the oversight and regulation of programs~~
20 ~~and services provided directly to residents of the communities, in~~
21 ~~which case "department" means State Department of Social~~
22 ~~Services; except as otherwise specified.~~

23 (2) "Deposit" means any transfer of consideration, including a
24 promise to transfer money or property, made by a depositor to any
25 entity that promises or proposes to promise to provide continuing
26 care, but is not authorized to enter into a continuing care contract
27 with the potential depositor.

28 (3) "Deposit agreement" means any agreement made between
29 any entity accepting a deposit and a depositor. Deposit agreements
30 for deposits received by an applicant prior to the department's
31 release of funds from the deposit escrow account shall be subject
32 to the requirements described in Section 1780.4.

33 (4) "Depository" means a bank or institution that is a member
34 of the Federal Deposit Insurance Corporation or a comparable
35 deposit insurance program.

36 (5) "Depositor" means any prospective resident who pays a
37 deposit. Where any portion of the consideration transferred to an
38 applicant as a deposit or to a provider as consideration for a
39 continuing care contract is transferred by a person other than the
40 prospective resident or a resident, that third-party transferor shall

1 have the same cancellation or refund rights as the prospective
2 resident or resident for whose benefit the consideration was
3 transferred.

4 (e) (1) “Elderly” means an individual who is 60 years of age
5 or older.

6 (2) “Entity” means an individual, partnership, corporation,
7 limited liability company, and any other form for doing business.
8 Entity includes a person, sole proprietorship, estate, trust,
9 association, and joint venture.

10 (3) “Entrance fee” means the sum of any initial, amortized, or
11 deferred transfer of consideration made or promised to be made
12 by, or on behalf of, a person entering into a continuing care contract
13 for the purpose of assuring care or related services pursuant to that
14 continuing care contract or as full or partial payment for the
15 promise to provide care for the term of the continuing care contract.
16 Entrance fee includes the purchase price of a condominium,
17 cooperative, or other interest sold in connection with a promise of
18 continuing care. An initial, amortized, or deferred transfer of
19 consideration that is greater in value than 12 times the monthly
20 care fee shall be presumed to be an entrance fee.

21 (4) “Equity” means the value of real property in excess of the
22 aggregate amount of all liabilities secured by the property.

23 (5) “Equity interest” means an interest held by a resident in a
24 continuing care retirement community that consists of either an
25 ownership interest in any part of the continuing care retirement
26 community property or a transferable membership that entitles the
27 holder to reside at the continuing care retirement community.

28 (6) “Equity project” means a continuing care retirement
29 community where residents receive an equity interest in the
30 continuing care retirement community property.

31 (7) “Equity securities” shall refer generally to large and
32 midcapitalization corporate stocks that are publicly traded and
33 readily liquidated for cash, and shall include shares in mutual funds
34 that hold portfolios consisting predominantly of these stocks and
35 other qualifying assets, as defined by Section 1792.2. Equity
36 securities shall also include other similar securities that are
37 specifically approved by the department.

38 (8) “Escrow agent” means a bank or institution, including, but
39 not limited to, a title insurance company, approved by the

1 department to hold and render accountings for deposits of cash or
2 cash equivalents.

3 (f) “Facility” means any place or accommodation where a
4 provider provides or will provide a resident with care or related
5 services, whether or not the place or accommodation is constructed,
6 owned, leased, rented, or otherwise contracted for by the provider.

7 (g) (reserved)

8 (h) (reserved)

9 (i) (1) “Inactive certificate of authority” means a certificate that
10 has been terminated under Section 1793.8.

11 (2) “Investment securities” means any of the following:

12 (A) Direct obligations of the United States, including obligations
13 issued or held in book-entry form on the books of the United States
14 Department of the Treasury or obligations the timely payment of
15 the principal of, and the interest on, which are fully guaranteed by
16 the United States.

17 (B) Obligations, debentures, notes, or other evidences of
18 indebtedness issued or guaranteed by any of the following:

19 (i) The Federal Home Loan Bank System.

20 (ii) The Export-Import Bank of the United States.

21 (iii) The Federal Financing Bank.

22 (iv) The Government National Mortgage Association.

23 (v) The Farmer’s Home Administration.

24 (vi) The Federal Home Loan Mortgage Corporation of the
25 Federal Housing Administration.

26 (vii) Any agency, department, or other instrumentality of the
27 United States if the obligations are rated in one of the two highest
28 rating categories of each rating agency rating those obligations.

29 (C) Bonds of the State of California or of any county, city and
30 county, or city in this state, if rated in one of the two highest rating
31 categories of each rating agency rating those bonds.

32 (D) Commercial paper of finance companies and banking
33 institutions rated in one of the two highest categories of each rating
34 agency rating those instruments.

35 (E) Repurchase agreements fully secured by collateral security
36 described in subparagraph (A) or (B), as evidenced by an opinion
37 of counsel, if the collateral is held by the provider or a third party
38 during the term of the repurchase agreement, pursuant to the terms
39 of the agreement, subject to liens or claims of third parties, and

1 has a market value, which is determined at least every 14 days, at
2 least equal to the amount so invested.

3 (F) Long-term investment agreements, which have maturity
4 dates in excess of one year, with financial institutions, including,
5 but not limited to, banks and insurance companies or their affiliates,
6 if the financial institution's paying ability for debt obligations or
7 long-term claims or the paying ability of a related guarantor of the
8 financial institution for these obligations or claims, is rated in one
9 of the two highest rating categories of each rating agency rating
10 those instruments, or if the short-term investment agreements are
11 with the financial institution or the related guarantor of the financial
12 institution, the long-term or short-term debt obligations, whichever
13 is applicable, of which are rated in one of the two highest long-term
14 or short-term rating categories, of each rating agency rating the
15 bonds of the financial institution or the related guarantor, provided
16 that if the rating falls below the two highest rating categories, the
17 investment agreement shall allow the provider the option to replace
18 the financial institution or the related guarantor of the financial
19 institution or shall provide for the investment securities to be fully
20 collateralized by investments described in subparagraph (A), and,
21 provided further, if so collateralized, that the provider has a
22 perfected first security lien on the collateral, as evidenced by an
23 opinion of counsel and the collateral is held by the provider.

24 (G) Banker's acceptances or certificates of deposit of, or time
25 deposits in, any savings and loan association that meets any of the
26 following criteria:

27 (i) The debt obligations of the savings and loan association, or
28 in the case of a principal bank, of the bank holding company, are
29 rated in one of the two highest rating categories of each rating
30 agency rating those instruments.

31 (ii) The certificates of deposit or time deposits are fully insured
32 by the Federal Deposit Insurance Corporation.

33 (iii) The certificates of deposit or time deposits are secured at
34 all times, in the manner and to the extent provided by law, by
35 collateral security described in subparagraph (A) or (B) with a
36 market value, valued at least quarterly, of no less than the original
37 amount of moneys so invested.

38 (H) Taxable money market government portfolios restricted to
39 obligations issued or guaranteed as to payment of principal and
40 interest by the full faith and credit of the United States.

1 (I) Obligations the interest on which is excluded from gross
2 income for federal income tax purposes and money market mutual
3 funds whose portfolios are restricted to these obligations, if the
4 obligations or mutual funds are rated in one of the two highest
5 rating categories by each rating agency rating those obligations.

6 (J) Bonds that are not issued by the United States or any federal
7 agency, but that are listed on a national exchange and that are rated
8 at least “A” by Moody’s Investors Service, or the equivalent rating
9 by Standard and Poor’s Corporation or Fitch Investors Service.

10 (K) Bonds not listed on a national exchange that are traded on
11 an over-the-counter basis, and that are rated at least “Aa” by
12 Moody’s Investors Service or “AA” by Standard and Poor’s
13 Corporation or Fitch Investors Service.

14 (j) (reserved)

15 (k) (reserved)

16 (l) “Life care contract” means a continuing care contract that
17 includes a promise, expressed or implied, by a provider to provide
18 or pay for routine services at all levels of care, including acute
19 care and the services of physicians and surgeons, to the extent not
20 covered by other public or private insurance benefits, to a resident
21 for the duration of his or her life. Care shall be provided under a
22 life care contract in a continuing care retirement community having
23 a comprehensive continuum of care, including a skilled nursing
24 facility, under the ownership and supervision of the provider on
25 or adjacent to the premises. No change may be made in the monthly
26 fee based on level of care. A life care contract shall also include
27 provisions to subsidize residents who become financially unable
28 to pay their monthly care fees.

29 (m) (1) “Monthly care fee” means the fee charged to a resident
30 in a continuing care contract on a monthly or other periodic basis
31 for current accommodations and services including care, board,
32 or lodging. Periodic entrance fee payments or other prepayments
33 shall not be monthly care fees.

34 (2) “Monthly fee contract” means a continuing care contract
35 that requires residents to pay monthly care fees.

36 (n) “Nonambulatory person” means a person who is unable to
37 leave a building unassisted under emergency conditions in the
38 manner described by Section 13131.

39 (o) (reserved)

1 (p) (1) “Per capita cost” means a continuing care retirement
2 community’s operating expenses, excluding depreciation, divided
3 by the average number of residents.

4 (2) “Periodic charges” means fees paid by a resident on a
5 periodic basis.

6 (3) “Permit to accept deposits” means a written authorization
7 by the department permitting an applicant to enter into deposit
8 agreements regarding a single specified continuing care retirement
9 community.

10 (4) *“Person” means an individual, a corporation, a partnership,*
11 *an association, a joint stock company, a business trust, an*
12 *unincorporated organization, or any similar entity, or any*
13 *combination thereof acting in concert.*

14 ~~(4)~~

15 (5) “Prepaid contract” means a continuing care contract in which
16 the monthly care fee, if any, may not be adjusted to cover the actual
17 cost of care and services.

18 ~~(5)~~

19 (6) “Preferred access” means that residents who have previously
20 occupied a residential living unit have a right over other persons
21 to any assisted living or skilled nursing beds that are available at
22 the community.

23 ~~(6)~~

24 (7) “Processing fee” means a payment to cover administrative
25 costs of processing the application of a depositor or prospective
26 resident.

27 ~~(7)~~

28 (8) “Promise to provide one or more elements of care” means
29 any expressed or implied representation that one or more elements
30 of care will be provided or will be available, such as by preferred
31 access.

32 ~~(8)~~

33 (9) “Proposes” means a representation that an applicant or
34 provider will or intends to make a future promise to provide care,
35 including a promise that is subject to a condition, such as the
36 construction of a continuing care retirement community or the
37 acquisition of a certificate of authority.

38 ~~(9)~~

39 (10) “Provider” means an entity that provides continuing care,
40 makes a continuing care promise, or proposes to promise to provide

1 continuing care. “Provider” also includes any entity that controls
2 an entity that provides continuing care, makes a continuing care
3 promise, or proposes to promise to provide continuing care. The
4 department shall determine whether an entity controls another
5 entity for purposes of this article. No homeowner’s association,
6 cooperative, or condominium association may be a provider.

7 (11) “Provider holding company system” consists of two or
8 more affiliated persons, one or more of which is a provider.

9 (10)

10 (12) “Provisional certificate of authority” means the certificate
11 issued by the department, properly executed and bearing the State
12 Seal, under Section 1786. A provisional certificate of authority
13 shall be limited to the specific continuing care retirement
14 community and number of units identified in the applicant’s
15 application.

16 (q) (reserved)

17 (r) (1) “Refund reserve” means the reserve a provider is required
18 to maintain, as provided in Section 1792.6.

19 (2) “Refundable contract” means a continuing care contract that
20 includes a promise, expressed or implied, by the provider to pay
21 an entrance fee refund or to repurchase the transferor’s unit,
22 membership, stock, or other interest in the continuing care
23 retirement community when the promise to refund some or all of
24 the initial entrance fee extends beyond the resident’s sixth year of
25 residency. Providers that enter into refundable contracts shall be
26 subject to the refund reserve requirements of Section 1792.6. ~~A~~
27 ~~continuing care contract that includes a promise to repay all or a~~
28 ~~portion of an entrance fee that is conditioned upon reoccupancy~~
29 ~~or resale of the unit previously occupied by the resident shall not~~
30 ~~be considered a refundable contract for purposes of the refund~~
31 ~~reserve requirements of Section 1792.6, provided that this~~
32 ~~conditional promise of repayment is not referred to by the applicant~~
33 ~~or provider as a “refund.”~~

34 (3) “Resale fee” means a levy by the provider against the
35 proceeds from the sale of a transferor’s equity interest.

36 (4) “Reservation fee” refers to consideration collected by an
37 entity that has made a continuing care promise or is proposing to
38 make this promise and has complied with Section 1771.4.

39 (5) “Resident” means a person who enters into a continuing
40 care contract with a provider, or who is designated in a continuing

1 care contract to be a person being provided or to be provided
2 services, including care, board, or lodging.

3 (6) “Residential care facility for the elderly” means a housing
4 arrangement as defined by Section 1569.2.

5 (7) “Residential living unit” means a living unit in a continuing
6 care retirement community that is not used exclusively for assisted
7 living services or nursing services.

8 (s) (reserved)

9 (t) (1) “Termination” means the ending of a continuing care
10 contract as provided for in the terms of the continuing care contract.

11 (2) “Transfer trauma” means death, depression, or regressive
12 behavior, that is caused by the abrupt and involuntary transfer of
13 an elderly resident from one home to another and results from a
14 loss of familiar physical environment, loss of well-known
15 neighbors, attendants, nurses and medical personnel, the stress of
16 an abrupt break in the small routines of daily life, or the loss of
17 visits from friends and relatives who may be unable to reach the
18 new facility.

19 (3) “Transferor” means a person who transfers, or promises to
20 transfer, consideration in exchange for care and related services
21 under a continuing care contract or proposed continuing care
22 contract, for the benefit of another. A transferor shall have the
23 same rights to cancel and obtain a refund as the depositor under
24 the deposit agreement or the resident under a continuing care
25 contract.

26 ~~SEC. 5.~~

27 *SEC. 8.* Section 1771.7 of the Health and Safety Code is
28 amended to read:

29 1771.7. (a) No resident of a continuing care retirement
30 community shall be deprived of any civil or legal right, benefit,
31 or privilege guaranteed by law, by the California Constitution, or
32 by the United States Constitution, solely by reason of status as a
33 resident of a community. In addition, because of the discretely
34 different character of residential living unit programs that are a
35 part of continuing care retirement communities, this section shall
36 augment Chapter 3.9 (commencing with Section 1599), Sections
37 72527 and 87572 of Title 22 of the California Code of Regulations,
38 and other applicable state and federal law and regulations.

39 (b) A prospective resident shall have the right to visit each of
40 the different care levels and to inspect assisted living and skilled

1 nursing home licensing reports including, but not limited to, the
2 most recent inspection reports and findings of complaint
3 investigations covering a period of no less than two years, prior
4 to signing a continuing care contract.

5 (c) All residents in residential living units shall have all of the
6 following rights:

7 (1) To live in an attractive, safe, and well maintained physical
8 environment.

9 (2) To live in an environment that enhances personal dignity,
10 maintains independence, and encourages self-determination.

11 (3) To participate in activities that meet individual physical,
12 intellectual, social, and spiritual needs.

13 (4) To expect effective channels of communication between
14 residents and staff, and between residents and the administration
15 or provider's governing body.

16 (5) To receive a clear and complete written contract that
17 establishes the mutual rights and obligations of the resident and
18 the continuing care retirement community.

19 (6) To manage his or her financial affairs.

20 (7) To be assured that all donations, contributions, gifts, or
21 purchases of provider-sponsored financial products shall be
22 voluntary, and may not be a condition of acceptance or of ongoing
23 eligibility for services.

24 (8) To maintain and establish ties to the local community.

25 (9) To organize and participate freely in the operation of
26 independent resident organizations and associations.

27 (d) A continuing care retirement community shall maintain an
28 environment that enhances the residents' self-determination and
29 independence. The provider shall do both of the following:

30 (1) Encourage the formation of a resident association by
31 interested residents who may elect a governing body. The provider
32 shall provide space and post notices for meetings, and provide
33 assistance in attending meetings for those residents who request
34 it. In order to promote a free exchange of ideas, at least part of
35 each meeting shall be conducted without the presence of any
36 continuing care retirement community personnel. The association
37 may, among other things, make recommendations to management
38 regarding resident issues that impact the residents' quality of life,
39 quality of care, exercise of rights, safety and quality of the physical
40 environment, concerns about the contract, fiscal matters, or other

1 issues of concern to residents. The management shall respond, in
2 writing, to a written request or concern of the resident association
3 within 20 working days of receiving the written request or concern.
4 Meetings shall be open to all residents to attend as well as to
5 present issues. Executive sessions of the governing body shall be
6 attended only by the governing body.

7 (2) Establish policies and procedures that promote the sharing
8 of information, dialogue between residents and management, and
9 access to the provider's governing body. The provider shall
10 biennially conduct a resident satisfaction survey that shall be made
11 available to the resident association or its governing body, or, if
12 neither exists, to a committee of residents at least 14 days prior to
13 the next semiannual meeting of residents and the governing board
14 of the provider required by subdivision (c) of Section 1771.8. A
15 copy of the survey shall be posted in a conspicuous location at
16 each facility.

17 (e) In addition to any statutory or regulatory bill of rights
18 required to be provided to residents of residential care facilities
19 for the elderly or skilled nursing facilities, the provider shall
20 provide a copy of the bill of rights prescribed by this section to
21 each resident at the time or before the resident signs a continuing
22 care contract, and at any time when the resident is proposed to be
23 moved to a different level of care.

24 (f) Each continuing care retirement community shall prominently
25 post in areas accessible to the residents and visitors a notice that
26 a copy of rights applicable to residents pursuant to this section and
27 any governing regulation issued by the Continuing Care Contracts
28 Branch of the ~~department~~ *State Department of Social Services* is
29 available upon request from the provider. The notice shall also
30 state that the residents have a right to file a complaint with the
31 Continuing Care Contracts Branch for any violation of those rights
32 and shall contain information explaining how a complaint may be
33 filed, including the telephone number and address of the Continuing
34 Care Contracts Branch.

35 (g) The resident has the right to freely exercise all rights
36 pursuant to this section, in addition to political rights, without
37 retaliation by the provider.

38 (h) The ~~department~~ *State Department of Social Services* may,
39 upon receiving a complaint of a violation of this section, request
40 a copy of the policies and procedures along with documentation

1 on the conduct and findings of any self-evaluations and consult
2 with the Continuing Care Advisory Committee for determination
3 of compliance. *The State Department of Social Services shall notify*
4 *the department of any violations of this section.*

5 (i) Failure to comply with this section shall be grounds for the
6 imposition of conditions on, suspension of, or revocation of the
7 provisional certificate of authority or certificate of authority *by*
8 *the department* pursuant to Section 1793.21.

9 (j) Failure to comply with this section constitutes a violation of
10 residents' rights. Pursuant to Section 1569.49, ~~the department~~ *State*
11 *Department of Social Services* shall impose and collect a civil
12 penalty of not more than one hundred fifty dollars (\$150) per
13 violation upon a continuing care retirement community that violates
14 a right guaranteed by this section.

15 *SEC. 9. Section 1771.8 of the Health and Safety Code is*
16 *amended to read:*

17 1771.8. (a) The Legislature finds and declares all of the
18 following:

19 (1) The residents of continuing care retirement communities
20 have a unique and valuable perspective on the operations of and
21 services provided in the community in which they live.

22 (2) Resident input into decisions made by the provider is an
23 important factor in creating an environment of cooperation,
24 reducing conflict, and ensuring timely response and resolution to
25 issues that may arise.

26 (3) Continuing care retirement communities are strengthened
27 when residents know that their views are heard and respected.

28 (b) The Legislature encourages continuing care retirement
29 communities to exceed the minimum resident participation
30 requirements established by this section by, among other things,
31 the following:

32 (1) Encouraging residents to form a resident association, and
33 assisting the residents, the resident association, and its governing
34 body to keep informed about the operation of the continuing care
35 retirement community.

36 (2) Encouraging residents of a continuing care retirement
37 community or their elected representatives to select residents to
38 participate as board members of the governing body of the
39 provider.

1 (3) Quickly and fairly resolving any dispute, claim, or grievance
2 arising between a resident and the continuing care retirement
3 community.

4 (c) The governing body of a provider, or the designated
5 representative of the provider, shall hold, at a minimum,
6 semiannual meetings with the residents of the continuing care
7 retirement community, or the resident association or its governing
8 body, for the purpose of the free discussion of subjects including,
9 but not limited to, income, expenditures, and financial trends and
10 issues as they apply to the continuing care retirement community
11 and proposed changes in policies, programs, and services. Nothing
12 in this section precludes a provider from taking action or making
13 a decision at any time, without regard to the meetings required
14 under this subdivision.

15 (d) (1) At least 30 days prior to the implementation of any
16 increase in the monthly care fee, the designated representative of
17 the provider shall convene a meeting, to which all residents shall
18 be invited, for the purpose of discussing the reasons for the
19 increase, the basis for determining the amount of the increase, and
20 the data used for calculating the increase. This meeting may
21 coincide with the semiannual meetings provided for in subdivision
22 (c). At least 14 days prior to the meeting to discuss any increase
23 in the monthly care fee, the provider shall make available to each
24 resident or resident household comparative data showing the budget
25 for the upcoming year, the current year's budget, and actual and
26 projected expenses for the current year, and a copy shall be posted
27 in a conspicuous location at each facility.

28 (2) *Any increase in a monthly care fee on or after January 1,*
29 *2010, shall be approved by the commissioner prior to the meeting*
30 *described in paragraph (1) and shall be subject to regulations*
31 *adopted by the commissioner. The commissioner may, in*
32 *accordance with Chapter 3.5 (commencing with Section 11340)*
33 *of Part 1 of Division 3 of Title 2 of the Government Code, adopt,*
34 *amend, or repeal reasonable regulations as may be necessary or*
35 *proper to implement this paragraph and to require actuarial*
36 *assessment of monthly care fees proposed by providers.*

37 (e) The governing body of a provider or the designated
38 representative of the provider shall provide residents with at least
39 14 days' advance notice of each meeting provided for in
40 subdivisions (c) and (d), and shall permit residents attending the

1 meeting to present issues orally and in writing. The governing
2 body of a provider or the designated representative of the provider
3 shall post the notice of, and the agenda for, the meeting in a
4 conspicuous place in the continuing care retirement community
5 at least 14 days prior to the meeting. The governing body of a
6 provider or the designated representative of the provider shall make
7 available to residents of the continuing care retirement community
8 upon request the agenda and accompanying materials at least seven
9 days prior to the meeting.

10 *(f) Any increase in the price or scope of care or other services*
11 *provided by a provider, other than changes in the monthly care*
12 *fees subject to subdivision (d), shall be approved by the*
13 *commissioner prior to implementation. The commissioner may, in*
14 *accordance with Chapter 3.5 (commencing with Section 11340)*
15 *of Part 1 of Division 3 of Title 2 of the Government Code, adopt,*
16 *amend, or repeal reasonable regulations to implement this*
17 *subdivision.*

18 ~~(f)~~

19 (g) Each provider shall make available to the resident association
20 or its governing body, or if neither exists, to a committee of
21 residents, a financial statement of activities for that facility
22 comparing actual costs to budgeted costs broken down by expense
23 category, not less than semiannually, and shall consult with the
24 resident association or its governing body, or, if neither exists,
25 with a committee of residents, during the annual budget planning
26 process. The effectiveness of consultations during the annual
27 budget planning process shall be evaluated at a minimum every
28 two years by the continuing care retirement community
29 administration. The evaluation, including any policies adopted
30 relating to cooperation with residents, shall be made available to
31 the resident association or its governing body, or, if neither exists,
32 to a committee of residents at least 14 days prior to the next
33 semiannual meeting of residents and the provider's governing body
34 provided for in subdivision (c), and a copy of the evaluation shall
35 be posted in a conspicuous location at each facility.

36 ~~(g)~~

37 (h) Each provider shall, within 10 days after the annual report
38 required pursuant to Section 1790 is submitted to the department,
39 provide, at a central and conspicuous location in the community,
40 a copy of the annual report, including the multifacility statement

1 of activities, and including a copy of the annual audited financial
2 statement, but excluding personal confidential information.

3 ~~(h)~~

4 (i) Each provider shall maintain, as public information, available
5 upon request to residents, prospective residents, and the public,
6 minutes of the board of director's meetings and shall retain these
7 records for at least three years from the date the records were filed
8 or issued.

9 ~~(i)~~

10 (j) The governing body of a provider that is not part of a
11 multifacility organization with more than one continuing care
12 retirement community in the state shall accept at least one resident
13 of the continuing care retirement community it operates to
14 participate as a nonvoting resident representative to the provider's
15 governing body.

16 ~~(j)~~

17 (k) In a multifacility organization having more than one
18 continuing care retirement community in the state, the governing
19 body of the multifacility organization shall elect either to have at
20 least one nonvoting resident representative to the provider's
21 governing body for each California-based continuing care
22 retirement community the provider operates or to have a
23 resident-elected committee composed of representatives of the
24 residents of each California-based continuing care retirement
25 community that the provider operates select or nominate at least
26 one nonvoting resident representative to the provider's governing
27 body for every three California-based continuing care retirement
28 communities or fraction thereof that the provider operates. If a
29 multifacility organization elects to have one representative for
30 every three communities that the provider operates, the provider
31 shall provide to the president of the residents association of each
32 of the communities that do not have a resident representative, the
33 same notice of board meetings, board packets, minutes, and other
34 materials as the resident representative. At the reasonable discretion
35 of the provider, information related to litigation, personnel,
36 competitive advantage, or confidential information that is not
37 appropriate to disclose, may be withheld.

38 ~~(k)~~

39 (l) In order to encourage innovative and alternative models of
40 resident involvement, a resident selected pursuant to subdivision

1 ~~(i)~~ (j) to participate as a resident representative to the provider's
2 governing body may, at the option of the resident association, be
3 selected in any one of the following ways:

4 (1) By a majority vote of the resident association of a provider
5 or by a majority vote of a resident-elected committee of residents
6 of a multifacility organization.

7 (2) If no resident association exists, any resident may organize
8 a meeting of the majority of the residents of the continuing care
9 retirement community to select or nominate residents to represent
10 them before the governing body.

11 (3) Any other method designated by the resident association.

12 ~~(i)~~

13 (m) The resident association, or organizing resident, or in the
14 case of a multifacility organization, the resident-elected committee
15 of residents, shall give residents of the continuing care retirement
16 community at least 30 days' advance notice of the meeting to select
17 a resident representative and shall post the notice in a conspicuous
18 place at the continuing care retirement community.

19 ~~(m)~~

20 (n) (1) Except as provided in subdivision ~~(n)~~ (o), the resident
21 representative shall receive the same notice of board meetings,
22 board packets, minutes, and other materials as members and shall
23 be permitted to attend, speak, and participate in all meetings of
24 the board.

25 (2) Resident representatives may share information from board
26 meetings with other residents, unless the information is confidential
27 or doing so would violate fiduciary duties to the provider. In
28 addition, a resident representative shall be permitted to attend
29 meetings of the board committee or committees that review the
30 annual budget of the facility or facilities and recommend increases
31 in monthly care fees. The resident shall receive the same notice
32 of committee meetings, information packets, minutes, and other
33 materials as committee members, and shall be permitted to attend,
34 speak at, and participate in, committee meetings. Resident
35 representatives shall perform their duties in good faith and with
36 such care, including reasonable inquiry, as an ordinarily prudent
37 person in a like position would use under similar circumstances.

38 ~~(n)~~

39 (o) Notwithstanding subdivision ~~(m)~~ (n), the governing body
40 may exclude resident representatives from its executive sessions

1 and from receiving board materials to be discussed during
2 executive session. However, resident representatives shall be
3 included in executive sessions and shall receive all board materials
4 to be discussed during executive sessions related to discussions of
5 the annual budgets, increases in monthly care fees, indebtedness,
6 and expansion of new and existing continuing care retirement
7 communities.

8 ~~(o)~~

9 (p) The provider shall pay all reasonable travel costs for the
10 resident representative.

11 ~~(p)~~

12 (q) The provider shall disclose in writing the extent of resident
13 involvement with the board to prospective residents.

14 ~~(q)~~

15 (r) Nothing in this section prohibits a provider from exceeding
16 the minimum resident participation requirements of this section
17 by, for example, having more resident meetings or more resident
18 representatives to the board than required or by having one or more
19 residents on the provider's governing body who are selected with
20 the active involvement of residents.

21 ~~(r) On or before April 1, 2003, the department, with input from~~
22 ~~the Continuing Care Advisory Committee of the department~~
23 ~~established pursuant to Section 1777, shall do all of the following:~~

24 ~~(1) Make recommendations to the Legislature as to whether~~
25 ~~any changes in current law regarding resident representation to~~
26 ~~the board is needed.~~

27 ~~(2) Provide written guidelines available to residents and~~
28 ~~providers that address issues related to board participation,~~
29 ~~including rights and responsibilities, and that provide guidance on~~
30 ~~the extent to which resident representatives who are not voting~~
31 ~~members of the board have a duty of care, loyalty, and obedience~~
32 ~~to the provider and the extent to which providers can classify~~
33 ~~information as confidential and not subject to disclosure by resident~~
34 ~~representatives to other residents.~~

35 *SEC. 10. Section 1776 of the Health and Safety Code is*
36 *amended to read:*

37 1776. (a) The department, in consultation with the State
38 Department of Social Services, shall adopt, amend, or repeal, in
39 accordance with Chapter 3.5 (commencing with Section 11340)
40 of Part 1 of Division 3 of Title 2 of the Government Code,

1 reasonable regulations as may be necessary or proper to carry out
2 the purposes and intent of this chapter, *with respect to the duties*
3 *transferred to the department under Section 1770.5*, and to protect
4 the rights of the elderly.

5 (b) *The State Department of Social Services may, in consultation*
6 *with the department, adopt, amend, or repeal, in accordance with*
7 *Chapter 3.5 (commencing with Section 11340) of Part 1 of Division*
8 *3 of Title 2 of the Government Code, reasonable regulations as*
9 *may be necessary or proper to carry out its duties under Section*
10 *1770.5.*

11 SEC. 11. Section 1776.2 of the Health and Safety Code is
12 amended to read:

13 1776.2. The department or the State Department of Social
14 Services may, by any duly authorized representative, inspect and
15 examine any continuing care retirement community, including the
16 books and records thereof, or the performance of any service
17 required by the continuing care contracts.

18 ~~SEC. 6.~~

19 SEC. 12. Section 1776.3 of the Health and Safety Code is
20 amended to read:

21 1776.3. (a) The Continuing Care Contracts Branch of the
22 ~~department~~ *State Department of Social Services* shall enter and
23 review each continuing care retirement community in the state at
24 least once every three years to augment the ~~branch's~~
25 *commissioner's* assessment of the provider's financial soundness.

26 (b) During its facility visits, the branch shall consider the
27 condition of the facility, whether the facility is operating in
28 compliance with applicable state law, and whether the provider is
29 performing the services it has specified in its continuing care
30 contracts.

31 (c) The branch shall issue guidelines that require each provider
32 to adopt a comprehensive disaster preparedness plan, update that
33 plan at least every three years, submit a copy to the ~~department~~
34 *State Department of Social Services*, and make copies available
35 to residents in a prominent location in each continuing care
36 retirement community facility.

37 (d) (1) *All residents' rights and service-related complaints by*
38 *residents shall be filed with the State Department of Social*
39 *Services, and all financially related complaints by residents shall*
40 *be filed with the commissioner. The State Department of Social*

1 *Services and the commissioner shall direct any improperly filed*
2 *complaints to the appropriate department.*

3 ~~(d) (1) The branch~~

4 *(2) The Continuing Care Contracts Branch of the State*
5 *Department of Social Services shall respond within 15 business*
6 *days to residents' rights, service-related, and financially related*
7 *complaints residents' rights and service-related complaints by*
8 *residents, and shall furnish to residents upon request and within*
9 *15 business days any document or report filed with the department*
10 *State Department of Social Services by a continuing care provider,*
11 *except documents protected by privacy laws. The commissioner*
12 *shall respond within 15 business days to financially related*
13 *complaints by residents.*

14 ~~(2)~~

15 *(3) The branch shall provide the Continuing Care Advisory*
16 *Committee with a summary of all residents' rights, service-related,*
17 *and financially related complaints by residents. The provider shall*
18 *rights and service-related complaints by residents. The*
19 *commissioner shall provide the Continuing Care Advisory*
20 *Committee with a summary of all financially related complaints*
21 *by residents.*

22 *(4) A provider shall disclose any citation issued by the*
23 *department pursuant to Section 1793.6 in its disclosure statement*
24 *to residents as updated annually, or more frequently as the*
25 *commissioner may direct, and shall post a notice of the citation in*
26 *a conspicuous location in the facility. The notice shall include a*
27 *statement indicating that residents may obtain additional*
28 *information regarding the citation from the provider and the*
29 *department.*

30 *(e) The branch shall annually review, summarize, and report to*
31 *the commissioner Director of Social Services on the work of the*
32 *Continuing Care Advisory Committee, including any issues arising*
33 *from its review of the condition of any continuing care retirement*
34 *community or any continuing care retirement community provider,*
35 *and including any recommendations for actions by the committee,*
36 *the department State Department of Social Services, or the*
37 *Legislature to improve oversight of continuing care retirement*
38 *community communities.*

39 *SEC. 13. Section 1776.6 of the Health and Safety Code is*
40 *amended to read:*

1 1776.6. (a) Pursuant to the California Public Records Act
2 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government Code) and the Information Practices
4 Act of 1977 (Chapter 1 (commencing with Section 1798) of Title
5 1.8 of Part 4 of Division 3 of the Civil Code), the following
6 documents are public information and shall be provided by the
7 department upon request: *actuarial reports*, audited financial
8 statements, annual reports and accompanying documents,
9 compliance or noncompliance with reserve requirements, whether
10 an application for a permit to accept deposits and certificate of
11 authority has been filed, whether a permit or certificate has been
12 granted or denied, and the type of care offered by the provider.

13 (b) The department shall regard resident data used in the
14 calculation of reserves as confidential.

15 ~~SEC. 7.~~

16 *SEC. 14.* Section 1777.2 of the Health and Safety Code is
17 amended to read:

18 1777.2. (a) The Continuing Care Advisory Committee shall:

19 ~~(1) Review the financial and managerial condition of continuing~~
20 ~~care retirement communities operating under a certificate of~~
21 ~~authority.~~

22 ~~(2) Review the financial condition of any continuing care~~
23 ~~retirement community that the committee determines is indicating~~
24 ~~signs of financial difficulty and may be in need of close~~
25 ~~supervision.~~

26 ~~(3)~~

27 (1) Monitor the condition of those continuing care retirement
28 communities that the ~~department~~ *State Department of Social*
29 *Services* or the chair of the committee may request.

30 ~~(4)~~

31 (2) Make available consumer information on the selection of
32 continuing care contracts and necessary contract protections in the
33 purchase of continuing care contracts.

34 ~~(5)~~

35 (3) Review new applications regarding ~~financial, actuarial, and~~
36 ~~marketing feasibility as requested by the department~~ *State*
37 *Department of Social Services*.

38 (b) The committee shall make recommendations to the
39 ~~department~~ *State Department of Social Services* regarding needed
40 changes in its rules and regulations and upon request provide advice

1 regarding the feasibility of new continuing care retirement
2 communities and the correction of problems relating to the
3 management or operation of any continuing care retirement
4 community. The committee shall also perform any other advisory
5 functions necessary to improve the management and operation of
6 continuing care retirement communities.

7 (c) The committee may report on its recommendations directly
8 to the ~~commissioner~~ *Director of Social Services*.

9 (d) The committee may hold meetings, as deemed necessary
10 to the performance of its duties.

11 *SEC. 15. Section 1777.5 is added to the Health and Safety*
12 *Code, to read:*

13 *1777.5. Where the department is required by this chapter to*
14 *consult with both the State Department of Social Services and the*
15 *Continuing Care Advisory Committee, the department shall give*
16 *greater weight to recommendations made by the State Department*
17 *of Social Services.*

18 ~~SEC. 8.~~

19 *SEC. 16. Section 1778 of the Health and Safety Code is*
20 *repealed.*

21 ~~SEC. 9.~~

22 *SEC. 17. Section 1778 is added to the Health and Safety Code,*
23 *to read:*

24 ~~*1778. There is hereby created in the State Treasury a fund that*~~
25 ~~*shall be known as the Continuing Care Provider Fee Fund. The*~~

26 *1778. The Continuing Care Provider Fee Fund is continued*
27 *in existence in the State Treasury. The fund shall consist of two*
28 *accounts, the Insurance Account and the State Department of Social*
29 *Services Account. Ninety-five percent of fees moneys received*
30 *pursuant to this chapter shall be deposited into the Insurance*
31 *Account and 5 percent shall be deposited into the State Department*
32 *of Social Services Account. Notwithstanding Section 13340 of the*
33 *Government Code, the moneys in the Insurance Account are*
34 *continuously appropriated to the Department of Insurance and*
35 *moneys in the State Department of Social Services Account are*
36 *continuously appropriated to the State Department of Social*
37 *Services for the purposes of this chapter.*

38 *SEC. 18. Section 1779 of the Health and Safety Code is*
39 *amended to read:*

1779. (a) An entity shall file an application for a permit to accept deposits and for a certificate of authority with the department, as set forth in this chapter, before doing any of the following:

(1) Accepting any deposit, reservation fee, or any other payment that is related to a promise or proposal to promise to provide continuing care.

(2) Entering into any reservation agreement, deposit agreement, or continuing care contract.

(3) Commencing construction of a prospective continuing care retirement community. If the project is to be constructed in phases, the application shall include all planned phases.

(4) Expanding an existing continuing care retirement community whether by converting existing buildings or by new construction.

(5) Converting an existing structure to a continuing care retirement community.

(6) Recommencing marketing on a planned continuing care retirement community when the applicant has previously forfeited a permit to accept deposits pursuant to Section 1703.7.

(7) Executing new continuing care contracts after a provisional certificate of authority or certificate of authority has been inactivated, revoked, surrendered, or forfeited.

(8) Closing the sale or transfer of a continuing care retirement community or assuming responsibility for continuing care contracts.

(b) For purposes of paragraph (4) of subdivision (a), an expansion of a continuing care retirement community shall be deemed to occur when there is an increase in the capacity stated on the residential care facility for the elderly license issued to the continuing care retirement community, an increase in the number of units at the continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that may affect obligations to current residents.

(c) Any provider that alters, or proposes to alter, its organization, including by means of a change in the type of entity it is, separation from another entity, merger, affiliation, spinoff, or sale, shall file a new application and obtain a new certificate of authority before the new entity may enter into any new continuing care contracts.

1 (d) A new application shall not be required for an entity name
2 change if there is no change in the entity structure or management.
3 If the provider undergoes a name change, the provider shall notify
4 the department in writing of the name change and shall return the
5 previously issued certificate of authority for reissuance under the
6 new name.

7 (e) Within 10 days of submitting an application for a certificate
8 of authority pursuant to paragraph (3), (4), (7), or (8) of subdivision
9 (a), the provider shall notify residents of the provider's existing
10 community or communities of its application. The provider shall
11 notify its resident associations of any filing with the department
12 to obtain new financing, additional financing for a continuing care
13 retirement community, the sale or transfer of a continuing care
14 retirement community, any change in structure, and of any
15 applications to the department for any expansion of a continuing
16 care retirement community *at least 60 calendar days in advance*
17 *of making those changes*. A summary of the plans and application
18 shall be posted in a prominent location in the continuing care
19 retirement community so as to be accessible to all residents and
20 the general public, indicating in the summary where the full plans
21 and application may be inspected in the continuing care retirement
22 community.

23 (f) When the department determines that it has sufficient
24 information on the provider or determines that the provisions do
25 not apply and the protections provided by this article are not
26 compromised, the department may eliminate all or portions of the
27 application contents required under Section 1779.4 for applications
28 filed pursuant to paragraphs (4), (5), (6), (7), and (8) of subdivision
29 (a) or pursuant to subdivision (c).

30 *SEC. 19. Section 1779.4 of the Health and Safety Code is*
31 *amended to read:*

32 1779.4. An application shall contain all of the following:

33 (a) A statement signed by the applicant under penalty of perjury
34 certifying that to the best of the applicant's knowledge and belief,
35 the items submitted in the application are correct. If the applicant
36 is a corporation, the chief executive officer shall sign the statement.
37 If there are multiple applicants, these requirements shall apply to
38 each applicant.

39 (b) The name and business address of the applicant.

1 (c) An itemization of the total fee calculation, including sources
2 of figures used, and a check in the amount of 80 percent of the
3 total application fee.

4 (d) The name, address, and a description of the real property of
5 the continuing care retirement community.

6 (e) An estimate of the number of continuing care residents at
7 the continuing care retirement community.

8 (f) A description of the proposed continuing care retirement
9 community, including the services and care to be provided to
10 residents or available for residents.

11 (g) A statement indicating whether the application is for a
12 certificate of authority to enter into continuing care or life care
13 contracts.

14 (h) A license to operate the proposed continuing care retirement
15 community as a residential care facility for the elderly or
16 documentation establishing that the applicant has received a
17 preliminary approval for licensure from the ~~department's~~
18 Community Care Licensing Division *in the State Department of*
19 *Social Services*.

20 (i) A license to operate the proposed skilled nursing facility or
21 evidence that an application has been filed with the Licensing and
22 Certification Division of the State Department of *Public Health*
23 ~~Services~~, if applicable.

24 (j) A statement disclosing any revocation or other disciplinary
25 action taken, or in the process of being taken, against a license,
26 permit, or certificate held or previously held by the applicant.

27 (k) A description of any matter in which any interested party
28 involved with the proposed continuing care retirement community
29 has been convicted of a felony or pleaded nolo contendere to a
30 felony charge, or been held liable or enjoined in a civil action by
31 final judgment, if the felony or civil action involved fraud,
32 embezzlement, fraudulent conversion, or the misappropriation of
33 property. For the purpose of this subdivision, "interested party"
34 includes any representative of the developer of the proposed
35 continuing care retirement community or the applicant, including
36 all general partners, executive officers, or chief operating officers
37 and board members of corporations; and managing members and
38 managers of limited liability companies for each entity; who has
39 significant decisionmaking authority with respect to the proposed
40 continuing care retirement community.

1 (l) If the applicant is an entity other than an individual, the
2 following information shall also be submitted:

3 (1) A statement identifying the type of legal entity and listing
4 the interest and extent of the interest of each principal in the legal
5 entity. For the purposes of this paragraph, “principal” means any
6 person or entity having a financial interest in the legal entity of ~~40~~
7 5 percent or more. When the application is submitted in the name
8 of a corporation, the parent, sole corporate shareholder, or sole
9 corporate member who controls the operation of the continuing
10 care retirement community shall be listed as an applicant. When
11 multiple corporate applicants exist, they shall be listed jointly by
12 corporate name on the application, and the certificate of authority
13 shall be issued in the joint names of the corporations. When the
14 application is submitted by a partnership, all general partners shall
15 be named as coapplicants and the department shall name them as
16 coproviders on any certificate of authority it issues.

17 (2) The names of the members of the provider’s governing body.

18 (3) A statement indicating whether the applicant was or is
19 affiliated with a religious, charitable, nonprofit or for-profit
20 organization, and the extent of any affiliation. The statement shall
21 also include the extent, if any, to which the affiliate organization
22 will be responsible for the financial and contract obligations of the
23 applicant and shall be signed by a responsible officer of the affiliate
24 organization.

25 (4) A statement identifying any parent entity or other affiliate
26 entity, the primary activities of each entity identified, the
27 relationship of each entity to the applicant, and the interest in the
28 applicant held by each entity.

29 (5) *A description of the capital structure, general financial*
30 *condition, ownership, and management of the provider and any*
31 *person controlling the provider.*

32 (6) *A description of the identity and relationship of every*
33 *member of the entity.*

34 (7) *Information about the following agreements in force,*
35 *relationships subsisting, and transactions currently outstanding*
36 *or that have occurred during the last fiscal year between the*
37 *provider and its affiliates:*

38 (A) *Loans, extensions of credit, investments, or purchases, sales,*
39 *or exchanges of securities of the affiliates by the provider or of*
40 *the provider by its affiliates.*

- 1 (B) *Purchases, sales, or exchanges of assets.*
- 2 (C) *Transactions not in the ordinary course of business.*
- 3 (D) *Guarantees or undertakings for the benefit of an affiliate*
4 *that result in an actual contingent exposure of the provider's assets*
5 *to liability.*
- 6 (E) *All management agreements, service contracts, and*
7 *cost-sharing arrangements.*
- 8 (F) *Insurance agreements.*
- 9 (G) *Dividends and other distributions to shareholders.*
- 10 (H) *Consolidated tax allocation agreements.*
- 11 (8) *A pledge of the provider's stock, including stock of a*
12 *subsidiary or controlling affiliate, for a loan made to a member*
13 *of the provider holding company system.*
- 14 (9) *Any other matters required by the commissioner.*
- 15 ~~(5)~~
- 16 (10) *Copies of all contracts, management agreements, or other*
17 *documents setting forth the relationships with each of the other*
18 *entities.*
- 19 ~~(6)~~
- 20 (11) *A statement indicating whether the applicant, a principal,*
21 *a parent entity, affiliate entity, subsidiary entity, any responsible*
22 *employee, manager, or board member, or anyone who profits from*
23 *the continuing care retirement community has had applied against*
24 *it any injunctive or restrictive order of a court of record, or any*
25 *suspension or revocation of any state or federal license, permit, or*
26 *certificate, arising out of or relating to business activity of health*
27 *or nonmedical care, including, but not limited to, actions affecting*
28 *a license to operate a health care institution, nursing home,*
29 *intermediate care facility, hospital, home health agency, residential*
30 *care facility for the elderly, community care facility, or child day*
31 *care facility.*
- 32 (m) *A description of the business experience of the applicants*
33 *in the operation or management of similar facilities.*
- 34 (n) *A copy of any advertising material regarding the proposed*
35 *continuing care retirement community prepared for distribution*
36 *or publication.*
- 37 (o) *Evidence of the bonds required by Section 1789.8.*
- 38 (p) *A copy of any proposed reservation agreement.*
- 39 (q) *A copy of the proposed deposit agreements.*
- 40 (r) *The name of the proposed escrow agent and depository.*

1 (s) Any copies of reservation and deposit escrow account
2 agreements.

3 (t) A copy of any proposed continuing care contracts.

4 (u) A statement of any monthly care fees to be paid by residents,
5 the components and services considered in determining the fees,
6 and the manner by which the provider may adjust these fees in the
7 future. If the continuing care retirement community is already in
8 operation, or if the provider operates one or more similar
9 continuing care retirement communities within this state, the
10 statement shall include tables showing the frequency and each
11 percentage increase in monthly care rates at each continuing care
12 retirement community for the previous five years, or any shorter
13 period for which each continuing care retirement community may
14 have been operated by the provider or his or her predecessor in
15 interest.

16 (v) A statement of the actions that have been, or will be, taken
17 by the applicant to fund reserves as required by Section 1792 or
18 1792.6 and to otherwise ensure that the applicant will have
19 adequate finances to fully perform continuing care contract
20 obligations. The statement shall describe actions such as
21 establishing restricted accounts, sinking funds, trust accounts, or
22 additional reserves. If the applicant is purchasing an existing
23 continuing care retirement community from a selling provider, the
24 applicant shall provide an actuarial report to determine the
25 liabilities of existing continuing care contracts and demonstrate
26 the applicant's ability to fund those obligations.

27 (w) A copy of audited financial statements for the three most
28 recent fiscal years of the applicant or any shorter period of time
29 the applicant has been in existence, prepared in accordance with
30 generally accepted accounting principles and accompanied by an
31 independent auditor's report from a reputable firm of certified
32 public accountants. The audited financial statements shall be
33 accompanied by a statement signed and dated by both the chief
34 financial officer and chief executive officer for the applicant or,
35 if applicable, by each general partner, or each managing member
36 and manager, stating that the financial statements are complete,
37 true, and correct in all material matters to the best of their
38 knowledge.

39 (x) Unaudited interim financial statements shall be included if
40 the applicant's fiscal year ended more than 90 days prior to the

1 date of filing. The statements shall be either quarterly or monthly,
2 and prepared on the same basis as the annual audited financial
3 statements or any other basis acceptable to the department.

4 (y) A financial study and a marketing study that reasonably
5 project the feasibility of the proposed continuing care retirement
6 community and are prepared by a firm or firms acceptable to the
7 department. These studies shall address and evaluate, at a
8 minimum, all of the following items:

9 (1) The applicant and its prior experience, qualifications, and
10 management, including a detailed description of the applicant's
11 proposed continuing care retirement community, its service
12 package, fee structure, and anticipated opening date.

13 (2) The construction plans, construction financing, and
14 permanent financing for the proposed continuing care retirement
15 community, including a description of the anticipated source, cost,
16 terms, and use of all funds to be used in the land acquisition,
17 construction, and operation of the continuing care retirement
18 community. This proposal shall include, at a minimum, all of the
19 following:

20 (A) A description of all debt to be incurred by the applicant for
21 the continuing care retirement community, including the anticipated
22 terms and costs of the financing. The applicant's outstanding
23 indebtedness related to the continuing care retirement community
24 may not, at any time, exceed the appraised value of the continuing
25 care retirement community.

26 (B) A description of the source and amount of the equity to be
27 contributed by the applicant.

28 (C) A description of the source and amount of all other funds,
29 including entrance fees, that will be necessary to complete and
30 operate the continuing care retirement community.

31 (D) A statement itemizing all estimated project costs, including
32 the real property costs and the cost of acquiring or designing and
33 constructing the continuing care retirement community, and all
34 other similar costs that the provider expects to incur prior to the
35 commencement of operation. This itemization shall identify all
36 costs related to the continuing care retirement community or
37 project, including financing expenses, legal expenses, occupancy
38 development costs, marketing costs, and furniture and equipment.

39 (E) A description of the interest expense, insurance premiums,
40 and property taxes that will be incurred prior to opening.

1 (F) An estimate of any proposed continuing care retirement
2 community reserves required for items such as debt service,
3 insurance premiums, and operations.

4 (G) An estimate of the amount of funds, if any, that will be
5 necessary to fund startup losses, fund statutory and refundable
6 contract reserves, and to otherwise provide additional financial
7 resources in an amount sufficient to ensure full performance by
8 the provider of its continuing care contract obligations.

9 (3) An analysis of the potential market for the applicant's
10 continuing care retirement community, addressing such items as:

11 (A) A description of the service area, including its demographic,
12 economic, and growth characteristics.

13 (B) A forecast of the market penetration the continuing care
14 retirement community will achieve based on the proposed fee
15 structure.

16 (C) Existing and planned competition in and about the primary
17 service area.

18 (4) A detailed description of the sales and marketing plan,
19 including all of the following:

20 (A) Marketing projections, anticipated sales, and cancellation
21 rates.

22 (B) Month-by-month forecast of unit sales through sellout.

23 (C) A description of the marketing methods, staffing, and
24 advertising media to be used by the applicant.

25 (D) An estimate of the total entrance fees to be received from
26 residents prior to opening the continuing care retirement
27 community.

28 (5) Projected move-in rates, deposit collections, and resident
29 profiles, including couple mix by unit type, age distribution, care
30 and nursing unit utilization, and unit turnover or resale rates.

31 (6) A description or analysis of development-period costs and
32 revenues throughout the development of the proposed continuing
33 care retirement community.

34 (z) Projected annual financial statements for the period
35 commencing on the first day of the applicant's current fiscal year
36 through at least the fifth year of operation.

37 (1) Projected annual financial statements shall be prepared on
38 an accrual basis using the same accounting principles and
39 procedures as the audited financial statements furnished pursuant
40 to subdivision (x).

1 (2) Separate projected annual cash-flow statements shall be
2 provided. These statements shall show projected annual cash-flows
3 for the duration of any debt associated with the continuing care
4 retirement community. If the continuing care retirement community
5 property is leased, the cash-flow statement shall demonstrate the
6 feasibility of closing the continuing care retirement community at
7 the end of the lease period.

8 (A) The projected annual cash-flow statements shall be
9 submitted using prevailing rates of interest, and assume no increase
10 of revenues and expenses due to inflation.

11 (B) The projected annual cash-flow statements shall include all
12 of the following:

13 (i) A detailed description and a full explanation of all
14 assumptions used in preparing the projections, accompanied by
15 supporting supplementary schedules and calculations, all to be
16 consistent with the financial study and marketing study furnished
17 pursuant to subdivision (y). The department may require such other
18 supplementary schedules, calculations, or projections as it
19 determines necessary for an adequate application.

20 (ii) Cash-flow from monthly operations showing projected
21 revenues for monthly fees received from continuing care contracts,
22 medical unit fees if applicable, other periodic fees, gifts and
23 bequests used in operations, and any other projected source of
24 revenue from operations less operating expenses.

25 (iii) Contractual cash-flow from activities showing projected
26 revenues from presales, deposit receipts, entrance fees, and all
27 other projected sources of revenue from activities, less contract
28 acquisition, marketing, and advertising expenditures.

29 (iv) Cash-flows from financing activities, including, but not
30 limited to, bond or loan proceeds less bond issue or loan costs and
31 fees, debt service including CAL Mortgage Insurance premiums,
32 trustee fees, principal and interest payments, leases, contracts,
33 rental agreements, or other long-term financing.

34 (v) Cash-flows from investment activities, including, but not
35 limited to, construction progress payments, architect and
36 engineering services, furnishings, and equipment not included in
37 the construction contract, project development, inspection and
38 testing, marketable securities, investment earnings, and interfund
39 transfers.

1 (vi) The increase or decrease in cash during the projection
2 period.

3 (vii) The beginning cash balance, which means cash, marketable
4 securities, reserves, and other funds on hand, available, and
5 committed to the proposed continuing care retirement community.

6 (viii) The cash balance at the end of the period.

7 (ix) Details of the components of the ending cash balance shall
8 be provided for each period presented, including, but not limited
9 to, the ending cash balances for bond reserves, other reserve funds,
10 deposit funds, and construction funds balance.

11 (3) If the cash-flow statements required by paragraph (2) indicate
12 that the provider will have cash balances exceeding two months'
13 projected operating expenses of the continuing care retirement
14 community, a description of the manner in which the cash balances
15 will be invested, and the persons who will be making the
16 investment decisions, shall accompany the application.

17 (4) The department may require the applicant to furnish
18 additional data regarding its operating budgets, projections of cash
19 required for major repairs and improvements, or any other matter
20 related to its projections including additional information,
21 schedules, and calculations regarding occupancy rate projections,
22 unit types, couple mix, sex and age estimates for resident mix,
23 turnover rates, refund obligations, and sales.

24 (aa) (1) A declaration by the applicant acknowledging that it
25 is required to execute and record a Notice of Statutory Limitation
26 on Transfer relating to continuing care retirement community
27 property.

28 (2) The notice required in this subdivision shall be
29 acknowledged and suitable for recordation, describe the property,
30 declare the applicant's intention to use all or part of the described
31 property for the purposes of a continuing care retirement
32 community pursuant to this chapter, and shall be in substantially
33 the following form:

34
35 "NOTICE OF STATUTORY LIMITATION ON TRANSFER
36

37 Notice is hereby given that the property described below is
38 licensed, or proposed to be licensed, for use as a continuing care
39 retirement community and accordingly, the use and transfer of the
40 property is subject to the conditions and limitations as to use and

1 transfer set forth in Sections 1773 and 1789.4 of the Health and
2 Safety Code. This notice is recorded pursuant to subdivision (aa)
3 of Section 1779.4 of the Health and Safety Code.

4 The real property, which is legally owned by (insert the name
5 of the legal owner) and is the subject of the statutory limitation to
6 which this notice refers, is more particularly described as follows:
7 (Insert the legal description and the assessor's parcel number of
8 the real property to which this notice applies.)”

9 (3) The Notice of Statutory Limitation on Transfer shall remain
10 in effect until notice of release is given by the department. The
11 department shall execute and record a release of the notice upon
12 proof of complete performance of all obligations to residents.

13 (4) Unless a Notice of Statutory Limitation on Transfer has been
14 recorded with respect to the land on which the applicant or provider
15 is operating, or intends to operate a continuing care retirement
16 community, prior to the date of execution of any trust deed,
17 mortgage, or any other lien or encumbrance securing or evidencing
18 the payment of money and affecting land on which the applicant
19 or provider intends to operate a continuing care retirement
20 community, the applicant or provider shall give the department
21 advance written notice of the proposed encumbrance. Upon the
22 giving of notice to the department, the applicant or provider shall
23 execute and record the Notice of Statutory Limitation on Transfer
24 in the office of the county recorder in each county in which any
25 portion of the continuing care retirement community is located
26 prior to encumbering the continuing care retirement community
27 property with the proposed encumbrance.

28 (5) In the event that the applicant or provider and the owner of
29 record are not the same entity on the date on which execution and
30 recordation of the notice is required, the leasehold or other interest
31 in the continuing care retirement community property held by the
32 applicant or provider shall survive in its entirety and without
33 change, any transfer of the continuing care retirement community
34 property by the owner. In addition, the applicant or provider shall
35 record a memorandum of leasehold or other interest in the
36 continuing care retirement community property that includes a
37 provision stating that its interest in the property survives any
38 transfer of the property by the owner. The applicant or provider
39 shall provide a copy of the notice and the memorandum of interest
40 to the owner of record by certified mail and to the department.

1 (6) The notice shall, and, if applicable, the memorandum of
2 interest shall be indexed by the recorder in the grantor-grantee
3 index to the name of the owner of record and the name of the
4 applicant or provider.

5 (ab) A statement that the applicant will keep the department
6 informed of any material changes to the proposed continuing care
7 retirement community or its application.

8 (ac) Any other information that may be required by the
9 department for the proper administration and enforcement of this
10 chapter.

11 *SEC. 20. Section 1779.6 of the Health and Safety Code is*
12 *amended to read:*

13 1779.6. (a) Within seven calendar days of receipt of an initial
14 application for a permit to accept deposits and a certificate of
15 authority, the department shall acknowledge receipt of the
16 application in writing.

17 (b) Within 30 calendar days following its receipt of an
18 application, the department shall determine if the application is
19 complete and inform the applicant of its determination. If the
20 department determines that the application is incomplete, its notice
21 to the applicant shall identify the additional forms, documents,
22 information, and other materials required to complete the
23 application. The department shall allow the applicant adequate
24 time to submit the requested information and materials. This review
25 may not determine the adequacy of the materials included in the
26 application.

27 (c) Within 120 calendar days after the department determines
28 that an application is complete, the department shall, *in*
29 *consultation with the State Department of Social Services*, review
30 the application for adequacy. An application shall be adequate if
31 it complies with all the requirements imposed by this chapter, and
32 both the financial study and marketing study reasonably project
33 the feasibility of the proposed continuing care retirement
34 community, as well as demonstrate the financial soundness of the
35 applicant. The department shall, *in consultation with the State*
36 *Department of Social Services*, either approve the application as
37 adequate under this chapter or notify the applicant that its
38 application is inadequate. If the application is inadequate, the
39 department shall identify the deficiencies in the application, provide

1 the appropriate code references, and give the applicant an
2 opportunity to respond.

3 (d) Within 60 calendar days after receiving any additional
4 information or clarification required from the applicant, the
5 department shall, *in consultation with the State Department of*
6 *Social Services*, respond to the applicant's submission in writing
7 and state whether each specific deficiency has been addressed
8 sufficiently to make the application adequate. If the department
9 determines that the application is adequate and in compliance with
10 this chapter, the department shall issue the permit to accept
11 deposits. If the department determines that the response is
12 inadequate, it may request additional information or clarification
13 from the applicant pursuant to subdivision (c) or deny the
14 application pursuant to Section 1779.10.

15 (e) If the applicant does not provide the department with the
16 additional information within 90 days after the department's notice
17 described in subdivision (c), the application may be denied for
18 being inadequate. Any new application shall require an application
19 fee.

20 *SEC. 21. Section 1781 of the Health and Safety Code is*
21 *amended to read:*

22 1781. (a) All deposits, excluding processing fees, shall be
23 placed in an escrow account. All terms governing the deposit
24 escrow account shall be approved in advance by the department.

25 (b) The deposit escrow account shall be established by an escrow
26 agent and all deposits shall be deposited in a depository located
27 in California and approved by the department. The department's
28 approval of the depository shall be based, in part, upon its ability
29 to ensure the safety of funds and properties entrusted to it and its
30 qualifications to perform the obligations of the depository pursuant
31 to the deposit escrow account agreement and this chapter. The
32 depository may be the same entity as the escrow agent. All deposits
33 shall be kept and maintained in a segregated account without any
34 commingling with other funds, including any funds or accounts
35 owned by the applicant.

36 (c) If the escrow agent is a title company, it shall meet the
37 following requirements:

38 (1) A Standard and Poors rating of "A" or better or a comparable
39 rating from a comparable rating service.

1 (2) Licensure in good standing with the ~~Department of Insurance~~
2 ~~department.~~

3 (3) Tangible net equity as required by the ~~Department of~~
4 ~~Insurance department.~~

5 (4) Reserves as required by the ~~Department of Insurance~~
6 ~~department.~~

7 (d) All deposits shall remain in escrow until the department has
8 authorized release of the deposits, as provided in Section 1783.3.

9 (e) Deposits shall be invested in instruments guaranteed by the
10 federal government or an agency of the federal government, or in
11 investment funds secured by federally guaranteed instruments.

12 (f) No funds deposited in a deposit escrow account shall be
13 subject to any liens, judgments, garnishments, or creditor's claims
14 against the applicant or the continuing care retirement community.
15 The deposit agreement shall also provide that deposits may not be
16 subject to any liens or charges by the escrow agent except that
17 cash equivalent deposits may be subject to transaction fees,
18 commissions, prepayment penalties, and other fees incurred in
19 connection with those deposits.

20 *SEC. 22. Section 1783.3 of the Health and Safety Code is*
21 *amended to read:*

22 1783.3. (a) In order to seek a release of escrowed funds, the
23 applicant shall petition in writing to the department and certify to
24 each of the following:

25 (1) The construction of the proposed continuing care retirement
26 community or phase is at least 50 percent completed.

27 (2) At least 10 percent of the total of each applicable entrance
28 fee has been received and placed in escrow for at least 60 percent
29 of the total number of residential living units. Any unit for which
30 a refund is pending may not be counted toward that 60-percent
31 requirement.

32 (3) Deposits made with cash equivalents have been either
33 converted into, or substituted with, cash or held for transfer to the
34 provider. A cash equivalent deposit may be held for transfer to the
35 provider, if all of the following conditions exist:

36 (A) Conversion of the cash equivalent instrument would result
37 in a penalty or other substantial detriment to the depositor.

38 (B) The provider and the depositor have a written agreement
39 stating that the cash equivalent will be transferred to the provider,

1 without conversion into cash, when the deposit escrow is released
2 to the provider under this section.

3 (C) The depositor is credited the amount equal to the value of
4 the cash equivalent.

5 (4) The applicant's average performance over any six-month
6 period substantially equals or exceeds its financial and marketing
7 projections approved by the department, for that period.

8 (5) The applicant has received a commitment for any permanent
9 mortgage loan or other long-term financing.

10 (b) The department shall instruct the escrow agent to release to
11 the applicant all deposits in the deposit escrow account when all
12 of the following requirements have been met:

13 (1) The department has confirmed the information provided by
14 the applicant pursuant to subdivision (a).

15 (2) The department, in consultation with the Continuing Care
16 Advisory Committee *and the State Department of Social Services*,
17 has determined that there has been substantial compliance with
18 projected annual financial statements that served as a basis for
19 issuance of the permit to accept deposits.

20 (3) The applicant has complied with all applicable licensing
21 requirements in a timely manner.

22 (4) The applicant has obtained a commitment for any permanent
23 mortgage loan or other long-term financing that is satisfactory to
24 the department.

25 (5) The applicant has complied with any additional reasonable
26 requirements for release of funds placed in the deposit escrow
27 accounts, established by the department under Section 1785.

28 (c) The escrow agent shall release the funds held in escrow to
29 the applicant only when the department has instructed it to do so
30 in writing.

31 (d) When an application describes different phases of
32 construction that will be completed and commence operating at
33 different times, the department may apply the 50 percent
34 construction completion requirement to any one or group of phases
35 requested by the applicant, provided the phase or group of phases
36 is shown in the applicant's projections to be economically viable.

37 *SEC. 23. Section 1785 of the Health and Safety Code is*
38 *amended to read:*

39 1785. (a) If, at any time prior to issuance of a certificate of
40 authority, the applicant's average performance over any six-month

1 period does not substantially equal or exceed the applicant's
2 projections for that period, the department, after consultation and
3 upon consideration of the recommendations of the Continuing
4 Care Advisory Committee *and the State Department of Social*
5 *Services*, may take any of the following actions:

6 (1) Cancel the permit to accept deposits and require that all
7 funds in escrow be returned to depositors immediately.

8 (2) Increase the required percentages of construction completed,
9 units reserved, or entrance fees to be deposited as required under
10 Sections 1782, 1783.3, 1786, and 1786.2.

11 (3) Increase the reserve requirements under this chapter.

12 (b) Prior to taking any actions specified in subdivision (a), the
13 department shall give the applicant an opportunity to submit a
14 feasibility study from a consultant in the area of continuing care,
15 approved by the department, to determine whether in his or her
16 opinion the proposed continuing care retirement community is still
17 viable, and if so, to submit a plan of correction. The department,
18 in consultation with the committee, shall determine if the plan is
19 acceptable.

20 (c) In making its determination, the department shall take into
21 consideration the overall performance of the proposed continuing
22 care retirement community to date.

23 (d) If deposits have been released from escrow, the department
24 may further require the applicant to reopen the escrow as a
25 condition of receiving any further entrance fee payments from
26 depositors or residents.

27 (e) The department may require the applicant to notify all
28 depositors and, if applicable, all residents, of any actions required
29 by the department under this section.

30 ~~SEC. 10.~~

31 *SEC. 24.* Section 1788 of the Health and Safety Code is
32 amended to read:

33 1788. (a) A continuing care contract shall contain all of the
34 following:

35 (1) The legal name and address of each provider.

36 (2) The name and address of the continuing care retirement
37 community.

38 (3) The resident's name and the identity of the unit the resident
39 will occupy.

1 (4) If there is a transferor other than the resident, the transferor
2 shall be a party to the contract and the transferor's name and
3 address shall be specified.

4 (5) If the provider has used the name of any charitable or
5 religious or nonprofit organization in its title before January 1,
6 1979, and continues to use that name, and that organization is not
7 responsible for the financial and contractual obligations of the
8 provider or the obligations specified in the continuing care contract,
9 the provider shall include in every continuing care contract a
10 conspicuous statement which clearly informs the resident that the
11 organization is not financially responsible.

12 (6) The date the continuing care contract is signed by the
13 resident and, where applicable, any other transferor.

14 (7) The duration of the continuing care contract.

15 (8) A list of the services that will be made available to the
16 resident as required to provide the appropriate level of care. The
17 list of services shall include the services required as a condition
18 for licensure as a residential care facility for the elderly, including
19 all of the following:

20 (A) Regular observation of the resident's health status to ensure
21 that his or her dietary needs, social needs, and needs for special
22 services are satisfied.

23 (B) Safe and healthful living accommodations, including
24 housekeeping services and utilities.

25 (C) Maintenance of house rules for the protection of residents.

26 (D) A planned activities program, which includes social and
27 recreational activities appropriate to the interests and capabilities
28 of the resident.

29 (E) Three balanced, nutritious meals and snacks made available
30 daily, including special diets prescribed by a physician as a medical
31 necessity.

32 (F) Assisted living services.

33 (G) Assistance with taking medications.

34 (H) Central storing and distribution of medications.

35 (I) Arrangements to meet health needs, including arranging
36 transportation.

37 (9) An itemization of the services that are included in the
38 monthly fee and the services that are available at an extra charge.
39 The provider shall attach a current fee schedule to the continuing
40 care contract.

1 (10) The procedures and conditions under which a resident may
2 be voluntarily and involuntarily transferred from a designated
3 living unit. The transfer procedures, at a minimum, shall include
4 provisions addressing all of the following circumstances under
5 which a transfer may be authorized:

6 (A) A continuing care retirement community may transfer a
7 resident under the following conditions, taking into account the
8 appropriateness and necessity of the transfer and the goal of
9 promoting resident independence:

10 (i) The resident is nonambulatory. The definition of
11 “nonambulatory,” as provided in Section 13131, shall either be
12 stated in full in the continuing care contract or be cited. If Section
13 13131 is cited, a copy of the statute shall be made available to the
14 resident, either as an attachment to the continuing care contract or
15 by specifying that it will be provided upon request. If a
16 nonambulatory resident occupies a room that has a fire clearance
17 for nonambulatory residence, transfer shall not be necessary.

18 (ii) The resident develops a physical or mental condition that
19 endangers the health, safety, or well-being of the resident or another
20 person.

21 (iii) The resident’s condition or needs require the resident’s
22 transfer to an assisted living care unit or skilled nursing facility,
23 because the level of care required by the resident exceeds that
24 which may be lawfully provided in the living unit.

25 (iv) The resident’s condition or needs require the resident’s
26 transfer to a nursing facility, hospital, or other facility, and the
27 provider has no facilities available to provide that level of care.

28 (B) Before the continuing care retirement community transfers
29 a resident under any of the conditions set forth in subparagraph
30 (A), the community shall satisfy all of the following requirements:

31 (i) Involve the resident and the resident’s responsible person,
32 as defined in paragraph (6) of subdivision (r) of Section 87101 of
33 Title 22 of the California Code of Regulations, and upon the
34 resident’s or responsible person’s request, family members, or the
35 resident’s physician or other appropriate health professional, in
36 the assessment process that forms the basis for the level of care
37 transfer decision by the provider. The provider shall offer an
38 explanation of the assessment process. If an assessment tool or
39 tools, including scoring and evaluating criteria, are used in the
40 determination of the appropriateness of the transfer, the provider

1 shall make copies of the completed assessment available upon the
2 request of the resident or the resident's responsible person.

3 (ii) Prior to sending a formal notification of transfer, the provider
4 shall conduct a care conference with the resident and the resident's
5 responsible person, and upon the resident's or responsible person's
6 request, family members, and the resident's health care
7 professionals, to explain the reasons for transfer.

8 (iii) Notify the resident and the resident's responsible person
9 the reasons for the transfer in writing.

10 (iv) Notwithstanding any other provision of this subparagraph,
11 if the resident does not have impairment of cognitive abilities, the
12 resident may request that his or her responsible person not be
13 involved in the transfer process.

14 (v) The notice of transfer shall be made at least 30 days before
15 the transfer is expected to occur, except when the health or safety
16 of the resident or other residents is in danger, or the transfer is
17 required by the resident's urgent medical needs. Under those
18 circumstances, the written notice shall be made as soon as
19 practicable before the transfer.

20 (vi) The written notice shall contain the reasons for the transfer,
21 the effective date, the designated level of care or location to which
22 the resident will be transferred, a statement of the resident's right
23 to a review of the transfer decision at a care conference, as provided
24 for in subparagraph (C), and for disputed transfer decisions, the
25 right to review by the Continuing Care Contracts Branch of the
26 ~~department~~ *State Department of Social Services*, as provided for
27 in subparagraph (D). The notice shall also contain the name,
28 address, and telephone number of the ~~department's Continuing~~
29 ~~Care Contracts Branch.~~ *Continuing Care Contracts Branch of the*
30 *State Department of Social Services.*

31 (vii) The continuing care retirement community shall provide
32 sufficient preparation and orientation to the resident to ensure a
33 safe and orderly transfer and to minimize trauma.

34 (C) The resident has the right to review the transfer decision at
35 a subsequent care conference that shall include the resident, the
36 resident's responsible person, and upon the resident's or
37 responsible person's request, family members, the resident's
38 physician or other appropriate health care professional, and
39 members of the provider's interdisciplinary team. The local
40 ombudsperson may also be included in the care conference, upon

1 the request of the resident, the resident's responsible person, or
2 the provider.

3 (D) For disputed transfer decisions, the resident or the resident's
4 responsible person has the right to a prompt and timely review of
5 the transfer process by the Continuing Care Contracts Branch of
6 the ~~department~~ *State Department of Social Services*.

7 (E) The decision of the ~~department's~~ Continuing Care Contracts
8 Branch *of the State Department of Social Services* shall be in
9 writing and shall determine whether the provider failed to comply
10 with the transfer process pursuant to subparagraphs (A) to (C),
11 inclusive. Pending the decision of the Continuing Care Contracts
12 Branch, the provider shall specify any additional care the provider
13 believes is necessary in order for the resident to remain in his or
14 her unit. The resident may be required to pay for the extra care, as
15 provided in the contract.

16 (F) Transfer of a second resident when a shared accommodation
17 arrangement is terminated.

18 (11) Provisions describing any changes in the resident's monthly
19 fee and any changes in the entrance fee refund payable to the
20 resident that will occur if the resident transfers from any unit.

21 (12) The provider's continuing obligations, if any, in the event
22 a resident is transferred from the continuing care retirement
23 community to another facility.

24 (13) The provider's obligations, if any, to resume care upon the
25 resident's return after a transfer from the continuing care retirement
26 community.

27 (14) The provider's obligations to provide services to the
28 resident while the resident is absent from the continuing care
29 retirement community.

30 (15) The conditions under which the resident must permanently
31 release his or her living unit.

32 (16) If real or personal properties are transferred in lieu of cash,
33 a statement specifying each item's value at the time of transfer,
34 and how the value was ascertained.

35 (A) An itemized receipt which includes the information
36 described above is acceptable if incorporated as a part of the
37 continuing care contract.

38 (B) When real property is or will be transferred, the continuing
39 care contract shall include a statement that the deed or other
40 instrument of conveyance shall specify that the real property is

1 conveyed pursuant to a continuing care contract and may be subject
2 to rescission by the transferor within 90 days from the date that
3 the resident first occupies the residential unit.

4 (C) The failure to comply with paragraph (16) shall not affect
5 the validity of title to real property transferred pursuant to this
6 chapter.

7 (17) The amount of the entrance fee.

8 (18) In the event two parties have jointly paid the entrance fee
9 or other payment which allows them to occupy the unit, the
10 continuing care contract shall describe how any refund of entrance
11 fees is allocated.

12 (19) The amount of any processing fee.

13 (20) The amount of any monthly care fee.

14 (21) For continuing care contracts that require a monthly care
15 fee or other periodic payment, the continuing care contract shall
16 include the following:

17 (A) A statement that the occupancy and use of the
18 accommodations by the resident is contingent upon the regular
19 payment of the fee.

20 (B) The regular rate of payment agreed upon (per day, week,
21 or month).

22 (C) A provision specifying whether payment will be made in
23 advance or after services have been provided.

24 (D) A provision specifying the provider will adjust monthly
25 care fees for the resident's support, maintenance, board, or lodging,
26 when a resident requires medical attention while away from the
27 continuing care retirement community.

28 (E) A provision specifying whether a credit or allowance will
29 be given to a resident who is absent from the continuing care
30 retirement community or from meals. This provision shall also
31 state, when applicable, that the credit may be permitted at the
32 discretion or by special permission of the provider.

33 (F) A statement of billing practices, procedures, and timelines.
34 A provider shall allow a minimum of 14 days between the date a
35 bill is sent and the date payment is due. A charge for a late payment
36 may only be assessed if the amount and any condition for the
37 penalty is stated on the bill.

38 (22) All continuing care contracts that include monthly care
39 fees shall address changes in monthly care fees by including either
40 of the following provisions:

1 (A) For prepaid continuing care contracts, which include
2 monthly care fees, one of the following methods:

3 (i) Fees shall not be subject to change during the lifetime of the
4 agreement.

5 (ii) Fees shall not be increased by more than a specified number
6 of dollars in any one year and not more than a specified number
7 of dollars during the lifetime of the agreement.

8 (iii) Fees shall not be increased in excess of a specified
9 percentage over the preceding year and not more than a specified
10 percentage during the lifetime of the agreement.

11 (B) For monthly fee continuing care contracts, except prepaid
12 contracts, changes in monthly care fees shall be based on projected
13 costs, prior year per capita costs, and economic indicators.

14 (23) A provision requiring that the provider give written notice
15 to the resident at least 30 days in advance of any change in the
16 resident's monthly care fees or in the price or scope of any
17 component of care or other services.

18 (24) A provision indicating whether the resident's rights under
19 the continuing care contract include any proprietary interests in
20 the assets of the provider or in the continuing care retirement
21 community, or both. Any statement in a contract concerning an
22 ownership interest shall appear in a large-sized font or print.

23 (25) If the continuing care retirement community property is
24 encumbered by a security interest that is senior to any claims the
25 residents may have to enforce continuing care contracts, a provision
26 shall advise the residents that any claims they may have under the
27 continuing care contract are subordinate to the rights of the secured
28 lender. For equity projects, the continuing care contract shall
29 specify the type and extent of the equity interest and whether any
30 entity holds a security interest.

31 (26) Notice that the living units are part of a continuing care
32 retirement community that is licensed as a residential care facility
33 for the elderly and, as a result, any duly authorized agent of the
34 ~~department~~ *State Department of Social Services* may, upon proper
35 identification and upon stating the purpose of his or her visit, enter
36 and inspect the entire premises at any time, without advance notice.

37 (27) A conspicuous statement, in at least 10-point boldface type
38 in immediate proximity to the space reserved for the signatures of
39 the resident and, if applicable, the transferor, that provides as
40 follows: "You, the resident or transferor, may cancel the transaction

1 without cause at any time within 90 days from the date you first
2 occupy your living unit. See the attached notice of cancellation
3 form for an explanation of this right.”

4 (28) Notice that during the cancellation period, the continuing
5 care contract may be canceled upon 30 days’ written notice by the
6 provider without cause, or that the provider waives this right.

7 (29) The terms and conditions under which the continuing care
8 contract may be terminated after the cancellation period by either
9 party, including any health or financial conditions.

10 (30) A statement that, after the cancellation period, a provider
11 may unilaterally terminate the continuing care contract only if the
12 provider has good and sufficient cause.

13 (A) Any continuing care contract containing a clause that
14 provides for a continuing care contract to be terminated for “just
15 cause,” “good cause,” or other similar provision, shall also include
16 a provision that none of the following activities by the resident,
17 or on behalf of the resident, constitutes “just cause,” “good cause,”
18 or otherwise activates the termination provision:

19 (i) Filing or lodging a formal complaint with the ~~department~~
20 *commissioner, the State Department of Social Services*, or other
21 appropriate authority.

22 (ii) Participation in an organization or affiliation of residents,
23 or other similar lawful activity.

24 (B) The provision required by this paragraph shall also state
25 that the provider shall not discriminate or retaliate in any manner
26 against any resident of a continuing care retirement community
27 for contacting the ~~department commissioner or the State~~
28 *Department of Social Services*, or any other state, county, or city
29 agency, or any elected or appointed government official to file a
30 complaint or for any other reason, or for participation in a residents’
31 organization or association.

32 (C) Nothing in this paragraph diminishes the provider’s ability
33 to terminate the continuing care contract for good and sufficient
34 cause.

35 (31) A statement that at least 90 days’ written notice to the
36 resident is required for a unilateral termination of the continuing
37 care contract by the provider.

38 (32) A statement concerning the length of notice that a resident
39 is required to give the provider to voluntarily terminate the
40 continuing care contract after the cancellation period.

(33) The policy or terms for refunding any portion of the entrance fee, in the event of cancellation, termination, or death. Every continuing care contract that provides for a refund of all or a part of the entrance fee shall also do all of the following:

(A) Specify the amount, if any, the resident has paid or will pay for upgrades, special features, or modifications to the resident's unit.

(B) State that if the continuing care contract is canceled or terminated by the provider, the provider shall do both of the following:

(i) Amortize the specified amount at the same rate as the resident's entrance fee.

(ii) Refund the unamortized balance to the resident at the same time the provider pays the resident's entrance fee refund.

(34) The following notice at the bottom of the signatory page:

"NOTICE"

(date)

This is a continuing care contract as defined by paragraph ~~(8)~~ (9) of subdivision (c), or subdivision (d) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the Department of Insurance as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: "Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the

1 provider which may result from the provider's failure to provide
2 this care and supervision."

3 (b) A life care contract shall also provide that:

4 (1) All levels of care, including acute care and physicians' and
5 surgeons' services will be provided to a resident.

6 (2) Care will be provided for the duration of the resident's life
7 unless the life care contract is canceled or terminated by the
8 provider during the cancellation period or after the cancellation
9 period for good cause.

10 (3) A comprehensive continuum of care will be provided to the
11 resident, including skilled nursing, in a facility under the ownership
12 and supervision of the provider on, or adjacent to, the continuing
13 care retirement community premises.

14 (4) Monthly care fees will not be changed based on the resident's
15 level of care or service.

16 (5) A resident who becomes financially unable to pay his or her
17 monthly care fees shall be subsidized provided the resident's
18 financial need does not arise from action by the resident to divest
19 the resident of his or her assets.

20 (c) Continuing care contracts may include provisions that do
21 any of the following:

22 (1) Subsidize a resident who becomes financially unable to pay
23 for his or her monthly care fees at some future date. If a continuing
24 care contract provides for subsidizing a resident, it may also
25 provide for any of the following:

26 (A) The resident shall apply for any public assistance or other
27 aid for which he or she is eligible and that the provider may apply
28 for assistance on behalf of the resident.

29 (B) The provider's decision shall be final and conclusive
30 regarding any adjustments to be made or any action to be taken
31 regarding any charitable consideration extended to any of its
32 residents.

33 (C) The provider is entitled to payment for the actual costs of
34 care out of any property acquired by the resident subsequent to
35 any adjustment extended to the resident under paragraph (1), or
36 from any other property of the resident which the resident failed
37 to disclose.

38 (D) The provider may pay the monthly premium of the resident's
39 health insurance coverage under Medicare to ensure that those
40 payments will be made.

1 (E) The provider may receive an assignment from the resident
2 of the right to apply for and to receive the benefits, for and on
3 behalf of the resident.

4 (F) The provider is not responsible for the costs of furnishing
5 the resident with any services, supplies, and medication, when
6 reimbursement is reasonably available from any governmental
7 agency, or any private insurance.

8 (G) Any refund due to the resident at the termination of the
9 continuing care contract may be offset by any prior subsidy to the
10 resident by the provider.

11 (2) Limit responsibility for costs associated with the treatment
12 or medication of an ailment or illness existing prior to the date of
13 admission. In these cases, the medical or surgical exceptions, as
14 disclosed by the medical entrance examination, shall be listed in
15 the continuing care contract or in a medical report attached to and
16 made a part of the continuing care contract.

17 (3) Identify legal remedies which may be available to the
18 provider if the resident makes any material misrepresentation or
19 omission pertaining to the resident's assets or health.

20 (4) Restrict transfer or assignments of the resident's rights and
21 privileges under a continuing care contract due to the personal
22 nature of the continuing care contract.

23 (5) Protect the provider's ability to waive a resident's breach
24 of the terms or provisions of the continuing care contract in specific
25 instances without relinquishing its right to insist upon full
26 compliance by the resident with all terms or provisions in the
27 contract.

28 (6) Provide that the resident shall reimburse the provider for
29 any uninsured loss or damage to the resident's unit, beyond normal
30 wear and tear, resulting from the resident's carelessness or
31 negligence.

32 (7) Provide that the resident agrees to observe the off-limit areas
33 of the continuing care retirement community designated by the
34 provider for safety reasons. The provider may not include any
35 provision in a continuing care contract that absolves the provider
36 from liability for its negligence.

37 (8) Provide for the subrogation to the provider of the resident's
38 rights in the case of injury to a resident caused by the acts or
39 omissions of a third party, or for the assignment of the resident's
40 recovery or benefits in this case to the provider, to the extent of

1 the value of the goods and services furnished by the provider to
2 or on behalf of the resident as a result of the injury.

3 (9) Provide for a lien on any judgment, settlement, or recovery
4 for any additional expense incurred by the provider in caring for
5 the resident as a result of injury.

6 (10) Require the resident's cooperation and assistance in the
7 diligent prosecution of any claim or action against any third party.

8 (11) Provide for the appointment of a conservator or guardian
9 by a court with jurisdiction in the event a resident becomes unable
10 to handle his or her personal or financial affairs.

11 (12) Allow a provider, whose property is tax exempt, to charge
12 the resident on a pro rata basis property taxes, or in-lieu taxes, that
13 the provider is required to pay.

14 (13) Make any other provision approved by the department.

15 (d) A copy of the resident's rights as described in Section 1771.7
16 shall be attached to every continuing care contract.

17 (e) A copy of the current audited financial statement of the
18 provider shall be attached to every continuing care contract. For
19 a provider whose current audited financial statement does not
20 accurately reflect the financial ability of the provider to fulfill the
21 continuing care contract obligations, the financial statement
22 attached to the continuing care contract shall include all of the
23 following:

24 (1) A disclosure that the reserve requirement has not yet been
25 determined or met, and that entrance fees will not be held in
26 escrow.

27 (2) A disclosure that the ability to provide the services promised
28 in the continuing care contract will depend on successful
29 compliance with the approved financial plan.

30 (3) A copy of the approved financial plan for meeting the reserve
31 requirements.

32 (4) Any other supplemental statements or attachments necessary
33 to accurately represent the provider's financial ability to fulfill its
34 continuing care contract obligations.

35 (f) A schedule of the average monthly care fees charged to
36 residents for each type of residential living unit for each of the five
37 years preceding execution of the continuing care contract shall be
38 attached to every continuing care contract. The provider shall
39 update this schedule annually at the end of each fiscal year. If the
40 continuing care retirement community has not been in existence

1 for five years, the information shall be provided for each of the
2 years the continuing care retirement community has been in
3 existence.

4 (g) If any continuing care contract provides for a health
5 insurance policy for the benefit of the resident, the provider shall
6 attach to the continuing care contract a binder complying with
7 Sections 382 and 382.5 of the Insurance Code.

8 (h) The provider shall attach to every continuing care contract
9 a completed form in duplicate, captioned "Notice of Cancellation."
10 The notice shall be easily detachable, and shall contain, in at least
11 10-point boldface type, the following statement:

12
13 "NOTICE OF CANCELLATION" (date)
14 Your first date of occupancy under this contract
15 is: _____
16

17 "You may cancel this transaction, without any penalty within
18 90 calendar days from the above date.

19 If you cancel, any property transferred, any payments made by
20 you under the contract, and any negotiable instrument executed
21 by you will be returned within 14 calendar days after making
22 possession of the living unit available to the provider. Any security
23 interest arising out of the transaction will be canceled.

24 If you cancel, you are obligated to pay a reasonable processing
25 fee to cover costs and to pay for the reasonable value of the services
26 received by you from the provider up to the date you canceled or
27 made available to the provider the possession of any living unit
28 delivered to you under this contract, whichever is later.

29 If you cancel, you must return possession of any living unit
30 delivered to you under this contract to the provider in substantially
31 the same condition as when you took possession.

32 Possession of the living unit must be made available to the
33 provider within 20 calendar days of your notice of cancellation.
34 If you fail to make the possession of any living unit available to
35 the provider, then you remain liable for performance of all
36 obligations under the contract.

37 To cancel this transaction, mail or deliver a signed and dated
38 copy of this cancellation notice, or any other written notice, or
39 send a telegram

1 to _____
2 (Name of provider)
3 at _____
4 (Address of provider's place of business)
5 not later than midnight of _____ (date).
6 I hereby cancel this
7 transaction _____
8 (Resident or
9 Transferor's signature)"

10
11 *SEC. 25. Section 1788.4 of the Health and Safety Code is*
12 *amended to read:*

13 1788.4. (a) During the cancellation period, the provider shall
14 pay all refunds owed to a resident within 14 calendar days after a
15 resident makes possession of the living unit available to the
16 provider.

17 (b) After the cancellation period, any refunds due to a resident
18 under a continuing care contract shall be paid within 14 calendar
19 days after a resident makes possession of the living unit available
20 to the provider or 90 calendar days after death or receipt of notice
21 of termination, whichever is later.

22 (c) In nonequity projects, if the continuing care contract is
23 canceled by either party during the cancellation period or
24 terminated by the provider after the cancellation period, the resident
25 shall be refunded the difference between the total amount of
26 entrance, monthly, and optional fees paid and the amount used for
27 care of the resident.

28 (d) If a resident has paid additional amounts for upgrades,
29 special features, or modifications to the living unit and the provider
30 terminates the resident's continuing care contract, the provider
31 shall amortize those additional amounts at the same rate as the
32 entrance fee and shall refund the unamortized balance to the
33 resident.

34 ~~(e) A lump-sum payment to a resident after termination of a~~
35 ~~continuing care contract that is conditioned upon resale of a unit~~
36 ~~shall not be considered to be a refund and may not be characterized~~
37 ~~or advertised as a refund. The lump-sum payment shall be paid to~~
38 ~~the resident within 14 calendar days after resale of the unit.~~

39 *SEC. 26. Section 1789 of the Health and Safety Code is*
40 *amended to read:*

1 1789. (a) A provider shall notify the department and obtain
2 its approval before making any changes to any of the following:
3 its name; its business structure or form of doing business; the
4 overall management of its continuing care retirement community;
5 or the terms of its financing.

6 (b) The provider shall give written notice of proposed changes
7 to the department at least 60 calendar days in advance of making
8 the changes described in this section.

9 (c) This notice requirement does not apply to routine facility
10 staff changes.

11 ~~(d) Within 10 calendar days of submitting notification to the~~
12 ~~department of any proposed changes under subdivision (a), the~~
13 *The provider shall notify the resident association of the proposed*
14 *changes in the manner required by subdivision (e) of Section 1779.*

15 *SEC. 27. Section 1789.15 is added to the Health and Safety*
16 *Code, to read:*

17 *1789.15. (a) The department shall, in accordance with Chapter*
18 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
19 *Title 2 of the Government Code, adopt, amend, or repeal*
20 *reasonable regulations as may be necessary or proper to apply*
21 *Article 3.5 (commencing with Section 1185) of Chapter 2 of Part*
22 *2 of Division 1 of the Insurance Code to require disclosure of*
23 *material transactions by providers to the commissioner in the same*
24 *manner as required of incorporated insurers.*

25 *(b) The department shall, in accordance with Chapter 3.5*
26 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
27 *2 of the Government Code, adopt, amend, or repeal reasonable*
28 *regulations as may be necessary or proper to apply Article 4.7*
29 *(commencing with Section 1215) of Chapter 2 of Part 2 of Division*
30 *1 of the Insurance Code to provider holding company systems to*
31 *carry out the purposes and intent of this chapter and to protect*
32 *the rights of the elderly by ensuring that provider holding company*
33 *systems engage in fair and reasonable financial transactions.*

34 *(c) Providers may make dividends or distributions to*
35 *shareholders or parent companies only from earned surplus.*

36 *(d) No dividends or distributions shall be declared out of earned*
37 *surplus derived from the mere net appreciation in the value of*
38 *assets not yet realized, nor shall any dividends or distributions be*
39 *declared from any part of that earned surplus derived from an*
40 *exchange of assets, unless and until the earned surplus has been*

1 realized or unless the assets received are currently realizable in
2 cash.

3 (e) Subject to regulations adopted pursuant to subdivision (b),
4 each provider shall report all dividends and other distributions to
5 shareholders within five business days following declaration. No
6 dividend or other distribution to shareholders may be paid until
7 at least 10 business days after receipt by the commissioner, at the
8 office of the department prescribed by the commissioner by notice
9 to all providers, of a notice of the declaration of the dividend or
10 other distribution.

11 (f) A provider may declare and distribute a dividend otherwise
12 prohibited by this section if (1) following payment of the dividend
13 the provider's surplus as regards its residents is (A) reasonable
14 in relation to its outstanding liabilities and (B) adequate to its
15 financial needs as prescribed by regulations adopted pursuant to
16 subdivision (b), and (2) the commissioner has given approval for
17 the dividend prior to payment.

18 (g) For purposes of this section, "earned surplus" means
19 unrestricted assets in excess of liabilities, as required to be
20 reported on the provider's annual statement.

21 SEC. 28. Section 1789.4 of the Health and Safety Code is
22 amended to read:

23 1789.4. (a) A provider for a continuing care retirement
24 community shall obtain approval from the department before
25 consummating any sale or transfer of the continuing care retirement
26 community or any interest in that community, other than sale of
27 an equity interest in a unit to a resident or other transferor.

28 (b) The provider shall provide written notice to the department
29 at least 120 calendar days prior to consummating the proposed
30 transaction.

31 (c) The notice required by this section shall include all of the
32 following:

33 (1) The identity of the purchaser.

34 (2) A description of the terms of the transfer or sale, including
35 the sales price.

36 (3) A plan for ensuring performance of the existing continuing
37 care contract obligations.

38 (4) Any other applicable disclosures required under Section
39 1215.2 of the Insurance Code. The commissioner shall adopt

1 *regulations specifying the additional disclosures required under*
2 *this paragraph.*

3 (d) The provider shall give written notice to all continuing care
4 contract residents and depositors 120 calendar days prior to the
5 sale or transfer. The notice shall do all of the following:

6 (1) Describe the parties.

7 (2) Describe the proposed sale or transfer.

8 (3) Describe the arrangements for fulfilling continuing care
9 contract obligations.

10 (4) Describe options available to any depositor or resident who
11 does not wish to have his or her contract assumed by a new
12 provider.

13 (5) Include an acknowledgment of receipt of the notice to be
14 signed by the resident.

15 (e) Unless a new provider assumes all of the continuing care
16 obligations of the selling provider at the close of the sale or
17 transfer, the selling provider shall set up a trust fund or secure a
18 performance bond to ensure the fulfillment of all its continuing
19 care contract obligations.

20 (f) The purchaser shall make applications for, and obtain, the
21 appropriate licenses and a certificate of authority before executing
22 any continuing care contracts or assuming the selling provider's
23 continuing care contract obligations.

24 (g) *Every person who is directly or indirectly the beneficial*
25 *owner of more than 10 percent of any class of stock of a provider*
26 *or who is a director or officer of a provider shall file in the office*
27 *of the commissioner on or before January 10, 2010, or within 10*
28 *days after he or she becomes that beneficial owner, director, or*
29 *officer, a statement, in a form prescribed by the commissioner, of*
30 *the amount of all stock of the provider of which he or she is the*
31 *beneficial owner and, within 10 days after the close of each*
32 *calendar month thereafter, if there has been a change in that*
33 *ownership during that month, shall file in the office of the*
34 *commissioner a statement, in a form prescribed by the*
35 *commissioner, indicating his or her ownership at the close of the*
36 *calendar month and the changes in his or her ownership as have*
37 *occurred during that calendar month.*

38 (h) *The department, in accordance with Chapter 3.5*
39 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
40 *2 of the Government Code, shall adopt, amend, or repeal*

1 *reasonable regulations as may be necessary or proper to apply*
2 *Sections 1104.3 to 1107.1, inclusive, of the Insurance Code to*
3 *prevent the unfair use of information that may have been obtained*
4 *by any beneficial owner of a provider, or principal, director, or*
5 *officer thereof, and to protect the rights of the elderly.*

6 *(i) In addition to the regulations adopted, amended, or repealed*
7 *under subdivision (b) of Section 1789.15, the department, in*
8 *accordance with Chapter 3.5 (commencing with Section 11340)*
9 *of Part 1 of Division 3 of Title 2 of the Government Code, shall*
10 *adopt, amend, or repeal reasonable regulations as may be*
11 *necessary or proper to apply Article 4.7 (commencing with Sections*
12 *1215) of Chapter 2 of Part 2 of Division 1 of the Insurance Code*
13 *in order to require approval by the commissioner of the sale or*
14 *transfer of a continuing care retirement community or any interest*
15 *in that community, other than the sale of an equity interest in a*
16 *unit to a resident or other transferor, in the same manner as*
17 *required of an incorporated insurer.*

18 *SEC. 29. Section 1790 of the Health and Safety Code is*
19 *amended to read:*

20 *1790. (a) Each provider that has obtained a provisional or final*
21 *certificate of authority and each provider that possesses an inactive*
22 *certificate of authority shall, by March 1 of each year, submit an*
23 *annual report of its financial condition as of the previous December*
24 *31. If the first day of March falls on a day other than a business*
25 *day, the filing shall be due to the department by the first business*
26 *day preceding March 1. The report shall consist of audited financial*
27 *statements and required reserve calculations, with accompanying*
28 *certified public accountants' opinions thereon, the reserve*
29 *information required by paragraph (2), Continuing Care Provider*
30 *Fee and Calculation Sheet, evidence of fidelity bond as required*
31 *by Section 1789.8, and certification that the continuing care*
32 *contract in use for new residents has been approved by the*
33 *department, in consultation with the State Department of Social*
34 *Services, all in a format provided by the department, in consultation*
35 *with the State Department of Social Services, and shall include all*
36 *of the following information:*

37 *(1) A certification, if applicable, that the entity is maintaining*
38 *reserves for prepaid continuing care contracts, statutory reserves,*
39 *and refund reserves.*

1 (2) Full details on the status, description, and amount of all
2 reserves that the provider currently designates and maintains, and
3 on per capita costs of operation for each continuing care retirement
4 community operated.

5 (3) Disclosure of any funds accumulated for identified projects
6 or purposes and any funds maintained or designated for specific
7 contingencies. Nothing in this ~~subdivision~~ *paragraph* shall be
8 construed to require the accumulation of funds or funding of
9 contingencies, nor shall it be interpreted to alter existing law
10 regarding the reserves that are required to be maintained.

11 (4) Full details on any increase in monthly care fees, the basis
12 for determining the increase, and the data used to calculate the
13 increase.

14 (5) The required reserve calculation schedules shall be
15 accompanied by the auditor's opinion as to compliance with
16 applicable statutes.

17 (6) Any other information as the department may require.

18 (b) Each provider shall file the annual report with the department
19 within four months after the provider's fiscal yearend. If the
20 complete annual report is not received by the due date, a one
21 thousand dollar (\$1,000) late fee shall accompany submission of
22 the reports. If the reports are more than 30 days past due, an
23 additional fee of thirty-three dollars (\$33) for each day over the
24 first 30 days shall accompany submission of the report. The
25 department may, at its discretion, waive the late fee for good cause.

26 (c) The annual report and any amendments thereto shall be
27 signed and certified by the chief executive officer of the provider,
28 stating that, to the best of his or her knowledge and belief, the
29 items are correct.

30 (d) A copy of the most recent annual audited financial statement
31 shall be transmitted by the provider to each transferor requesting
32 the statement.

33 (e) A provider shall amend its annual report on file with the
34 department at any time, without the payment of any additional fee,
35 if an amendment is necessary to prevent the report from containing
36 a material misstatement of fact or omitting a material fact.

37 (f) If a provider is no longer entering into continuing care
38 contracts, and currently is caring for 10 or fewer continuing care
39 residents, the provider may request permission from the
40 department, in lieu of filing the annual report, to establish a trust

1 fund or to secure a performance bond to ensure fulfillment of
2 continuing care contract obligations. The request shall be made
3 each year within 30 days after the provider's fiscal yearend. The
4 request shall include the amount of the trust fund or performance
5 bond determined by calculating the projected life costs, less the
6 projected life revenue, for the remaining continuing care residents
7 in the year the provider requests the waiver. If the department
8 approves the request, the following shall be submitted to the
9 department annually:

10 (1) Evidence of trust fund or performance bond and its amount.

11 (2) A list of continuing care residents. If the number of
12 continuing care residents exceeds 10 at any time, the provider shall
13 comply with the requirements of this section.

14 (3) A provider fee as required by subdivision (c) of Section
15 1791.

16 (g) If the department determines a provider's annual audited
17 report needs further analysis and investigation, as a result of
18 incomplete and inaccurate financial statements, significant financial
19 deficiencies, development of work out plans to stabilize financial
20 solvency, or for any other reason, the provider shall reimburse the
21 department for reasonable actual costs incurred by the department
22 or its representative. The reimbursed funds shall be deposited in
23 the Continuing Care Contract Provider Fee Fund.

24 *(h) The department may decline to grant or renew or may*
25 *suspend or revoke a certificate of authority of a provider that*
26 *knowingly files with the department a false financial statement.*

27 *(i) Any officer, director, employee, or agent of any provider*
28 *who willfully signs or files a false or untrue report or statement*
29 *of the business, affairs, or condition of the provider with intent to*
30 *deceive any public officer, office, or board to which the provider*
31 *is required by law to report, or which has authority by law to*
32 *examine into its affairs or transactions, is guilty of a felony.*

33 *(j) The commissioner shall require statements and reports filed*
34 *with the department to be verified as follows:*

35 *(1) If made by a domestic corporation, by the oaths of any two*
36 *of the executive officers thereof.*

37 *(2) If made by an individual or firm, by the oath of that*
38 *individual or a member of the firm.*

1 (3) *If made by a foreign provider, by the oath of the principal*
2 *executive officer thereof, or manager, residing within the United*
3 *States.*

4 (k) *In any case where a provider is required by law to file with*
5 *the department statements or reports respecting its financial*
6 *condition, income, or disbursements, verified or signed by its*
7 *designated officers, agents, or employees, the department may*
8 *accept and file the statement or report verified by affidavit of the*
9 *president or vice president and the treasurer or secretary of the*
10 *provider, in lieu of the verification or signature otherwise*
11 *prescribed by law.*

12 (l) *In addition to the annual statement required to be filed*
13 *pursuant to subdivision (a), each provider shall file an*
14 *authorization for disclosure to the commissioner of financial*
15 *records pertaining to such funds pursuant to Section 7473 of the*
16 *Government Code, to be effective until the next such annual filing.*

17 SEC. 30. *Section 1791.5 is added to the Health and Safety*
18 *Code, to read:*

19 1791.5. (a) *A provider shall maintain at all times reserves in*
20 *an amount estimated in the aggregate to provide for the payment*
21 *of all services and debts for which the provider may be liable, and*
22 *to provide for the expense of adjustment or settlement of losses*
23 *and claims.*

24 (b) *The reserves shall be computed in accordance with*
25 *regulations made from time to time by the commissioner. The*
26 *commissioner shall model these regulations on the regulations*
27 *adopted pursuant to Section 923.5 of the Insurance Code.*

28 (c) *The reserves required by this section shall include, but not*
29 *be limited to, the liquid reserve required under Sections 1792 and*
30 *1792.2 and the refund reserve required under Sections 1792.6 and*
31 *1793, if applicable.*

32 SEC. 31. *Section 1792.2 of the Health and Safety Code is*
33 *amended to read:*

34 1792.2. (a) *A provider shall satisfy its liquid reserve obligation*
35 *with qualifying assets. Qualifying assets are:*

36 (1) *Cash.*

37 (2) *Cash equivalents as defined in paragraph (4) of subdivision*
38 *(c) of Section 1771.*

39 (3) *Investment securities, as defined in paragraph (2) of*
40 *subdivision (i) of Section 1771.*

1 (4) Equity securities, including mutual funds, as defined in
2 paragraph (7) of subdivision (e) of Section 1771.

3 ~~(5) Lines of credit and letters of credit that meet the~~
4 ~~requirements of this paragraph. The line of credit or letter of credit~~
5 ~~shall be issued by a state or federally chartered financial institution~~
6 ~~approved by the department or whose long-term debt is rated in~~
7 ~~the top three long-term debt rating categories by either Moody's~~
8 ~~Investors Service, Standard and Poor's Corporation, or a recognized~~
9 ~~securities rating agency acceptable to the department. The line of~~
10 ~~credit or letter of credit shall obligate the financial institution to~~
11 ~~furnish credit to the provider.~~

12 ~~(A) The terms of the line of credit or letter of credit shall at a~~
13 ~~minimum provide both of the following:~~

14 ~~(i) The department's approval shall be obtained by the provider~~
15 ~~and communicated in writing to the financial institution before~~
16 ~~any modification.~~

17 ~~(ii) The financial institution shall fund the line of credit or letter~~
18 ~~of credit and pay the proceeds to the provider no later than four~~
19 ~~business days following written instructions from the department~~
20 ~~that, in the sole judgment of the department, funding of the~~
21 ~~provider's minimum liquid reserve is required.~~

22 ~~(B) The provider shall provide written notice to the department~~
23 ~~at least 14 days before the expiration of the line of credit or letter~~
24 ~~of credit if the term has not been extended or renewed by that time.~~
25 ~~The notice shall describe the qualifying assets the provider will~~
26 ~~use to satisfy the liquid reserve requirement when the line of credit~~
27 ~~or letter of credit expires.~~

28 ~~(C) A provider may satisfy all or a portion of its liquid reserve~~
29 ~~requirement with the available and unused portion of a qualifying~~
30 ~~line of credit or letter of credit.~~

31 ~~(6)~~

32 (5) For purposes of satisfying all or a portion of a provider's
33 debt service reserve requirement described in Section 1792.3,
34 restricted assets that are segregated or held in a separate account
35 or escrow as a debt service reserve under the terms of the provider's
36 long-term debt instruments are qualifying assets, subject to all of
37 the following conditions:

38 (A) The assets are restricted by the debt instrument so that they
39 may be used only to pay principal, interest, and credit enhancement
40 premiums.

1 (B) The provider furnishes to the department a copy of the
2 agreement under which the restricted assets are held and certifies
3 that it is a correct and complete copy. The provider, escrow holder,
4 or other entity holding the assets must agree to provide to the
5 department any information the department may request concerning
6 the debt service reserve it holds.

7 (C) The market value, or guaranteed value, if applicable, of the
8 restricted assets, up to the amount the provider must hold as a debt
9 reserve under Section 1792.3, will be included as part of the
10 provider's liquid reserve.

11 (D) The restricted assets described in this paragraph will not
12 reduce or count towards the amount the provider must hold in its
13 liquid reserve for operating expenses.

14 ~~(7)~~

15 (6) For purposes of satisfying all or a portion of a provider's
16 operating expense reserve requirement described in Section 1792.4,
17 restricted assets that are segregated or held in a separate account
18 or escrow as a reserve for operating expenses, are qualifying assets
19 subject to all of the following conditions:

20 (A) The governing instrument restricts the assets so that they
21 may be used only to pay operating costs when operating funds are
22 insufficient.

23 (B) The provider furnishes to the department a copy of the
24 agreement under which the assets are held, certified by the provider
25 to be a correct and complete copy. The provider, escrow holder,
26 or other entity holding the assets shall agree to provide to the
27 department any information the department may request concerning
28 the account.

29 (C) The market value, or the guaranteed value, if applicable, of
30 the restricted assets, up to the amount the provider is required to
31 hold as an operating expense reserve under Section 1792.4, will
32 be included as part of the provider's liquid reserve.

33 (D) The restricted assets described in this paragraph shall not
34 reduce or count towards the amount the provider is required to
35 hold in its liquid reserve for long-term debt.

36 (b) Except as otherwise provided in this subdivision, the assets
37 held by the provider as its liquid reserve may not be subject to any
38 liens, charges, judgments, garnishments, or creditors' claims and
39 may not be hypothecated, pledged as collateral, or otherwise
40 encumbered in any manner. A provider may encumber assets held

1 in its liquid reserve as part of a general security pledge of assets
2 or similar collateralization that is part of the provider's long-term
3 capital debt covenants and is included in the provider's long-term
4 debt indenture or similar instrument.

5 *SEC. 32. Section 1792.3 of the Health and Safety Code is*
6 *amended to read:*

7 1792.3. (a) Each provider shall include in its liquid reserve a
8 reserve for its long-term debt obligations in an amount equal to
9 the sum of all of the following:

10 (1) All regular principal and interest payments, as well as credit
11 enhancement premiums, *due to be* paid by the provider during the
12 immediately ~~preceding fiscal year on account of any fully~~
13 ~~amortizing long-term debt owed by the provider. If a provider has~~
14 ~~incurred new long-term debt during the immediately preceding~~
15 ~~fiscal year, the amount required by this paragraph for that debt is~~
16 ~~12 times the provider's most recent monthly payment on the debt~~
17 ~~following 12 months.~~

18 (2) Facility rental or leasehold payments, and any related
19 payments such as lease insurance, *due to be* paid by the provider
20 during the immediately ~~preceding fiscal year~~ *following 12 months.*

21 (3) All payments *due to be* paid by the provider during the
22 immediately ~~preceding fiscal year~~ *following 12 months* on account
23 of any debt that provides for a balloon payment. ~~If the balloon~~
24 ~~payment debt was incurred within the immediately preceding fiscal~~
25 ~~year, the amount required by this paragraph for that debt is 12~~
26 ~~times the provider's most recent monthly payment on the debt~~
27 ~~made during the fiscal year.~~

28 (b) If any balloon payment debt matures within the next 24
29 months, the provider shall submit *to the department and file* with
30 its annual report a plan for refinancing the debt or repaying the
31 debt with existing assets.

32 ~~(c) When principal and interest payments on long-term debt~~
33 ~~are paid to a trust whose beneficial interests are held by the~~
34 ~~residents, the department may waive all or any portion of the debt~~
35 ~~service reserve required by this section. The department shall not~~
36 ~~waive any debt service reserve requirement unless the department~~
37 ~~finds that the waiver is consistent with the financial protections~~
38 ~~imposed by this chapter.~~

39 *SEC. 33. Section 1792.4 of the Health and Safety Code is*
40 *amended to read:*

1 1792.4. ~~(a) Each provider shall include in its liquid reserve a~~
2 ~~reserve for its operating expenses in an amount that equals or~~
3 ~~exceeds 75 days' net operating expenses. For purposes of this~~
4 ~~section: that is sufficient to provide for the continued operation of~~
5 ~~its continuing care retirement communities. The commissioner~~
6 ~~shall, in accordance with Chapter 3.5 (commencing with Section~~
7 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code,~~
8 ~~adopt regulations specifying the reserves required to be maintained~~
9 ~~for purposes of this section and shall model those regulations on~~
10 ~~the regulations applicable to insurers under Article 3.5~~
11 ~~(commencing with Section 2310) of Subchapter 3 of Chapter 5 of~~
12 ~~Title 10 of the California Code of Regulations.~~

13 ~~(1) Seventy-five days net operating expenses shall be calculated~~
14 ~~by dividing the provider's operating expenses during the~~
15 ~~immediately preceding fiscal year by 365, and multiplying that~~
16 ~~quotient by 75.~~

17 ~~(2) "Net operating expenses" includes all expenses except the~~
18 ~~following:~~

19 ~~(A) The interest and credit enhancement expenses factored into~~
20 ~~the provider's calculation of its long-term debt reserve obligation~~
21 ~~described in Section 1792.3.~~

22 ~~(B) Depreciation or amortization expenses.~~

23 ~~(C) An amount equal to the reimbursement paid to the provider~~
24 ~~during the past 12 months for services to residents other than~~
25 ~~residents holding continuing care contracts.~~

26 ~~(D) Extraordinary expenses that the department determines may~~
27 ~~be excluded by the provider. A provider shall apply in writing for~~
28 ~~a determination by the department and shall provide supporting~~
29 ~~documentation prepared in accordance with generally accepted~~
30 ~~accounting principles.~~

31 ~~(b) A provider that has been in operation for less than 12 months~~
32 ~~shall calculate its net operating expenses by using its actual~~
33 ~~expenses for the months it has operated and, for the remaining~~
34 ~~months, the projected net operating expense amounts it submitted~~
35 ~~to the department as part of its application for a certificate of~~
36 ~~authority.~~

37 *SEC. 34. Section 1792.5 of the Health and Safety Code is*
38 *amended to read:*

39 1792.5. (a) The provider shall compute its liquid reserve
40 requirement as of the end of the provider's most recent fiscal

1 yearend based on its audited financial statements for that period
2 and, at the time it files its annual report, shall file a form acceptable
3 to the department certifying all of the following:

4 (1) The amount the provider is required to hold as a liquid
5 reserve, including the amounts required for the debt service reserve
6 and the operating expense reserve.

7 (2) The qualifying assets, and their respective values, the
8 provider has designated for its debt service reserve and for its
9 operating expense reserve.

10 (3) The amount of any deficiency or surplus for the provider's
11 debt service reserve and the provider's operating expense reserve.

12 (b) For the purpose of calculating the amount held by the
13 provider to satisfy its liquid reserve requirement, all qualifying
14 assets used to satisfy the liquid reserve requirements shall be valued
15 at their fair market value as of the end of the provider's most
16 recently completed fiscal year. Restricted assets that have
17 guaranteed values and are designated as qualifying assets under
18 paragraph (5) or (6) ~~or (7)~~ of subdivision (a) of Section 1792.2
19 may be valued at their guaranteed values.

20 *SEC. 35. Section 1792.6 of the Health and Safety Code is*
21 *amended to read:*

22 1792.6. (a) Any provider offering a refundable contract, or
23 other entity assuming responsibility for refundable contracts, shall
24 maintain a refund reserve ~~in trust for the residents that, as specified~~
25 ~~by the commissioner by regulation, is actuarially sound and~~
26 ~~sufficient to pay refund liabilities as they become due. The refund~~
27 ~~liability shall be paid solely out of this reserve. The amount of the~~
28 ~~refund reserve shall be revised annually by the provider and the~~
29 ~~provider shall submit its calculation of the refund reserve amount~~
30 ~~to the department in conjunction with the annual report required~~
31 ~~by Section 1790. This reserve shall accumulate interest and~~
32 ~~earnings and shall be invested in any of the following:~~

33 (b) *A provider that entered into a refundable contract prior to*
34 *January 1, 2010, or other entity assuming responsibility for a*
35 *refundable contract issued prior to January 1, 2010, shall submit*
36 *a plan of reorganization to the commissioner by April 1, 2010, for*
37 *the purposes of complying with this section. The commissioner*
38 *shall, by written notice, accept or direct the amendment of a plan*
39 *of reorganization submitted pursuant to this section.*

(c) A refundable contract entered into on or after January 1, 2010, shall not condition a promise to repay all or any portion of an entrance fee on reoccupancy or resale of the unit previously occupied by the resident.

(1) Qualifying assets as defined in Section 1792.2.

(2) Real estate, subject to all of the following conditions:

(A) To the extent approved by the department, the trust account may invest up to 70 percent of the refund reserves in real estate that is both used to provide care and housing for the holders of the refundable continuing care contracts and is located on the same campus where these continuing care contract holders reside.

(B) Investments in real estate shall be limited to 50 percent of the providers' net equity in the real estate. The net equity shall be the book value, assessed value, or current appraised value within 12 months prior to the end of the fiscal year, less any depreciation, and encumbrances, all according to audited financial statements acceptable to the department.

(b) Each refund reserve trust shall be established at an institution qualified to be an escrow agent. The escrow agreement between the provider and the institution shall be in writing and include the terms and conditions described in this section. The escrow agreement shall be submitted to and approved by the department before it becomes effective.

(c) The amount to be held in the reserve shall be the total of the amounts calculated with respect to each individual resident holding a refundable contract as follows:

(1) Determine the age in years and the portion of the entry fee for the resident refundable for the seventh year of residency and thereafter.

(2) Determine life expectancy of that individual based on all of the following rules:

(A) The following life expectancy table shall be used in connection with all continuing care contracts:

Age	Females	Males	-	Age	Females	Males
55	26.323	23.635	-	83	7.952	6.269
56	25.526	22.863	-	84	7.438	5.854
57	24.740	22.101	-	85	6.956	5.475
58	23.964	21.350	-	86	6.494	5.124
59	23.199	20.609	-	87	6.054	4.806

	Age	Females	Males	-	Age	Females	Males
1							
2	60	22.446	19.880	-	88	5.613	4.513
3	61	21.703	19.163	-	89	5.200	4.236
4	62	20.972	18.457	-	90	4.838	3.957
5	63	20.253	17.764	-	91	4.501	3.670
6	64	19.545	17.083	-	92	4.175	3.388
7	65	18.849	16.414	-	93	3.862	3.129
8	66	18.165	15.759	-	94	3.579	2.903
9	67	17.493	15.116	-	95	3.329	2.705
10	68	16.832	14.486	-	96	3.109	2.533
11	69	16.182	13.869	-	97	2.914	2.384
12	70	15.553	13.268	-	98	2.741	2.254
13	71	14.965	12.676	-	99	2.584	2.137
14	72	14.367	12.073	-	100	2.433	2.026
15	73	13.761	11.445	-	101	2.289	1.919
16	74	13.189	10.830	-	102	2.152	1.818
17	75	12.607	10.243	-	103	2.022	1.723
18	76	12.011	9.673	-	104	1.899	1.637
19	77	11.394	9.139	-	105	1.784	1.563
20	78	10.779	8.641	-	106	1.679	1.510
21	79	10.184	8.159	-	107	1.588	1.500
22	80	9.620	7.672	-	108	1.522	1.500
23	81	9.060	7.188	-	109	1.500	1.500
24	82	8.501	6.719	-	110	1.500	1.500

25

26 (B) If there is a couple, the life expectancy for the person with
 27 the longer life expectancy shall be used.

28 (C) The life expectancy table set forth in this paragraph shall
 29 be used until expressly provided to the contrary through the
 30 amendment of this section.

31 (D) For residents over 110 years of age, 1.500 years shall be
 32 used in computing life expectancy.

33 (E) If a continuing care retirement community has contracted
 34 with a resident under 55 years of age, the continuing care retirement
 35 community shall provide the department with the methodology
 36 used to determine that resident's life expectancy.

37 (3) For that resident, use an interest rate of 6 percent or lower
 38 to determine from compound interest tables the factor that, when
 39 multiplied by one dollar (\$1), represents the amount, at the time
 40 the computation is made, that will grow at the assumed compound

1 interest rate to one dollar (\$1) at the end of the period of the life
2 expectancy of the resident.

3 (4) ~~Multiply the refundable portion of the resident's entry fee~~
4 ~~amount by the factor obtained in paragraph (3) to determine the~~
5 ~~amount of reserve required to be maintained.~~

6 (5) ~~The sum of these amounts with respect to each resident shall~~
7 ~~constitute the reserve for refundable contracts.~~

8 (6) ~~The reserve for refundable contracts shall be revised annually~~
9 ~~as provided for in subdivision (a), using the interest rate, refund~~
10 ~~obligation amount, and individual life expectancies current at that~~
11 ~~time.~~

12 (d) ~~Withdrawals may be made from the trust to pay refunds~~
13 ~~when due under the terms of the refundable entrance fee contracts~~
14 ~~and when the balance in the trust exceeds the required refund~~
15 ~~reserve amount determined in accordance with subdivision (c).~~

16 (e) ~~Deposits shall be made to the trust with respect to new~~
17 ~~residents when the entrance fee is received and in the amount~~
18 ~~determined with respect to that resident in accordance with~~
19 ~~subdivision (c).~~

20 (f) ~~Additional deposits shall be made to the trust fund within~~
21 ~~30 days of any annual reporting date on which the trust fund~~
22 ~~balance falls below the required reserve in accordance with~~
23 ~~subdivision (c) and the deposits shall be in an amount sufficient~~
24 ~~to bring the trust balance into compliance with this section.~~

25 (g) ~~Providers who have used a method previously allowed by~~
26 ~~statute to satisfy their refund reserve requirement may continue to~~
27 ~~use that method.~~

28 *SEC. 36. Section 1792.7 of the Health and Safety Code is*
29 *amended to read:*

30 1792.7. (a) The Legislature finds and declares all of the
31 following:

32 (1) In continuing care contracts, providers offer a wide variety
33 of living accommodations and care programs for an indefinite or
34 extended number of years in exchange for substantial payments
35 by residents.

36 (2) The annual reporting and reserve requirements for each
37 continuing care provider should include a report that summarizes
38 the provider's recent and projected performance in a form useful
39 to residents, prospective residents, *the department*, and the
40 *department State Department of Social Services.*

1 ~~(3) Certain providers enter into “life care contracts” or similar~~
2 ~~contracts with their residents.~~ Periodic actuarial studies that
3 examine the actuarial financial condition of ~~these~~ providers will
4 help to assure their long-term financial soundness.

5 (b) Each provider shall annually file with the department a report
6 that shows certain key financial indicators for the provider’s past
7 five years, based on the provider’s actual experience, and for the
8 upcoming five years, based on the provider’s projections. Providers
9 shall file their key indicator reports in the manner required by
10 Section 1792.9 and in a form prescribed by the department.

11 ~~(c) Each provider that has entered into Type A contracts shall~~
12 ~~file with the department~~ *an a qualified* ~~actuary’s opinion as to the~~
13 ~~actuarial financial condition of the provider’s continuing care~~
14 ~~operations in the manner required by Section 1792.10.~~

15 *SEC. 37. Section 1792.8 of the Health and Safety Code is*
16 *amended to read:*

17 1792.8. (a) For purposes of this article, “actuarial study” means
18 an analysis that addresses the current actuarial financial condition
19 of a provider that is performed by ~~an a qualified~~ *actuary* in
20 accordance with accepted actuarial principles and the standards
21 of practice adopted by the Actuarial Standards Board. An actuarial
22 study shall include all of the following:

23 (1) An actuarial report.

24 (2) A statement of ~~actuarial~~ *the opinion of the qualified actuary*
25 *as to whether the reserves and related actuarial items held in*
26 *support of the continuing care contracts and all provider liabilities*
27 *and debt obligations specified by the commissioner by regulation*
28 *are computed appropriately, are based on assumptions that satisfy*
29 *contractual provisions, are consistent with prior reported amounts,*
30 *and comply with applicable laws of this state. The commissioner,*
31 *by regulation, shall define the specifics of this opinion and add*
32 *any other items deemed to be necessary to its scope.*

33 (A) *Unless exempted by regulation, every provider shall include*
34 *in the statement required by this paragraph a statement of the*
35 *opinion of the same qualified actuary as to whether the reserves*
36 *and related actuarial items held in support of the continuing care*
37 *contracts specified by the commissioner by regulation, when*
38 *considered in light of the assets held by the provider with respect*
39 *to the reserves and related actuarial items, make adequate*
40 *provision for the provider’s liabilities and obligations.*

(B) *The commissioner may provide by regulation for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.*

(C) *The opinion required by this paragraph shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may by regulation prescribe.*

(D) *In the case of an opinion required to be submitted by a foreign or alien provider, the commissioner may accept the opinion filed by that provider with the applicable supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a provider domiciled in this state.*

(3) An actuarial balance sheet.

(4) A cohort pricing analysis.

(5) A cashflow projection.

(6) A description of the actuarial methodology, formulae, and assumptions.

(b) *The qualified actuary performing the actuarial study shall be liable for his or her negligence or other tortious conduct.*

(c) *Disciplinary action by the commissioner against the provider or the qualified actuary shall be defined in regulations by the commissioner.*

~~(b)~~

(d) ~~“Actuary”~~ *“Qualified actuary”* means a member in good standing of the American Academy of Actuaries who is qualified to sign a statement of actuarial opinion *and who meets the requirements set forth in regulations of the commissioner.*

~~(e) “Type A contract” means a continuing care contract that has an up-front entrance fee and includes provision for housing, residential services, amenities, and unlimited specific health-related services with little or no substantial increases in monthly charges, except for normal operating costs and inflation adjustments.~~

SEC. 38. *Section 1792.10 of the Health and Safety Code is amended to read:*

1792.10. (a) ~~Each provider that has entered into Type A contracts shall submit to the department, at least once every five~~ *three years, an a qualified actuary’s opinion as to the provider’s* actuarial financial condition. *The qualified actuary’s opinion shall*

1 be based on an actuarial study completed by the opining *qualified*
2 actuary in a manner that meets the requirements described in
3 Section 1792.8. The *qualified* actuary's opinion, and supporting
4 actuarial study, shall examine, refer to, and opine on the provider's
5 actuarial financial condition as of a specified date that is within
6 four months of the date the opinion is provided to the department.

7 ~~(b) Each provider required to file an actuary's opinion under~~
8 ~~subdivision (a) that held a certificate of authority on December~~
9 ~~31, 2003, shall file its actuary's opinion before the expiration of~~
10 ~~five years following the date it last filed an actuarial study or~~
11 ~~opinion with the department. Thereafter, the provider shall file its~~
12 ~~required actuary's opinion before the expiration of five years~~
13 ~~following the date it last filed an actuary's opinion with the~~
14 ~~department.~~

15 ~~(c) Each provider required to file an actuary's opinion under~~
16 ~~subdivision (a) that did not hold a certificate of authority on~~
17 ~~December 31, 2003, shall file its first actuary's opinion within 45~~
18 ~~days following the due date for the provider's annual report for~~
19 ~~the fiscal year in which the provider obtained its certificate of~~
20 ~~authority. Thereafter, the provider shall file its required actuary's~~
21 ~~opinion before the expiration of five years following the date it~~
22 ~~last filed an actuary's opinion with the department.~~

23 *(b) (1) A provider holding a certificate of authority as of*
24 *January 1, 2010, whose most recent submission of an actuary's*
25 *opinion pursuant to this section occurred on or after January 1,*
26 *2008, and prior to January 1, 2010, shall submit the opinion*
27 *required by this section within three years from the date of that*
28 *most recent submission, and at least once every three years*
29 *thereafter.*

30 *(2) A provider holding a certificate of authority prior to January*
31 *1, 2010, that has not submitted an actuary's opinion pursuant to*
32 *this section or whose most recent submission of an actuary's*
33 *opinion occurred prior to January 1, 2008, shall submit the opinion*
34 *required by this section by January 15, 2010, and at least once*
35 *every three years thereafter.*

36 *(3) A provider that obtains a certificate of authority on or after*
37 *January 1, 2010, shall submit the qualified actuary's opinion*
38 *required by this section within 45 days of the date the provider is*
39 *required to submit an annual report under Section 1790, and at*
40 *least once every three years thereafter.*

1 ~~(d)~~

2 (c) The *qualified* actuary's opinion required by subdivision (a)
3 shall comply with generally accepted actuarial principles and the
4 standards of practice adopted by the Actuarial Standards Board.
5 The *qualified* actuary's opinion shall also include statements that
6 the data and assumptions used in the underlying actuarial study
7 are appropriate and that the methods employed in the actuarial
8 study are consistent with sound actuarial principles and practices.
9 The *qualified* actuary's opinion must state whether the provider
10 has adequate resources to meet all its actuarial liabilities and related
11 statement items, including an appropriate surplus, and whether the
12 provider's financial condition is actuarially sound.

13 SEC. 39. *Section 1793 of the Health and Safety Code is*
14 *amended to read:*

15 1793. (a) Any provider offering a refundable contract, or other
16 entity assuming responsibility for refundable contracts, shall
17 maintain a refund reserve fund in trust for the residents. This trust
18 fund shall remain intact to accumulate interest earnings resulting
19 from investments of liquid reserves in accordance with paragraph
20 (1) of subdivision (c) and subparagraphs (A) through (E), inclusive,
21 of paragraph (3) of subdivision (c) of Section 1792.2. The amount
22 of the refund reserve shall be revised annually by the provider and
23 submitted to the department in conjunction with the annual report
24 required by Section 1790.

25 (b) Any providers or other entity assuming responsibility for
26 refundable contracts, which has not executed refundable contracts
27 in a continuing care retirement community prior to January 1,
28 1996, and proposes to execute these contracts in that continuing
29 care retirement community after that date, shall maintain a refund
30 reserve fund in trust for the residents holding such contracts.

31 (1) Except as noted in paragraph (2), this trust fund shall remain
32 intact as specified in subdivision (a).

33 (2) To the extent approved by the department, the trust account
34 may invest up to 70 percent of the refund reserves in real estate
35 that is used to provide care and housing for the holders of the
36 refundable continuing care contracts and is located on the same
37 campus where these continuing care contract holders reside.

38 These investments in real estate shall be limited to 50 percent
39 of the providers' net equity in the real estate. The net equity shall
40 be the book value, assessed value, or current appraised value within

1 12 months prior to the end of the fiscal year, less any depreciation,
2 encumbrances, and the amount required for statutory reserves
3 under Section 1792.2, all according to audited financial statements
4 acceptable to the department. This paragraph shall apply to
5 applications, and for those phases of the project that were identified
6 as part of applications, submitted after May 31, 1995.

7 (3) Any provider who submitted an application on or before
8 May 31, 1995, may provide for the refund obligation of this section
9 with a trust account that invests up to 85 percent of the refund
10 reserves in the continuing care retirement community's real estate
11 and the remaining 15 percent in the form of either cash or an
12 unconditional, irrevocable letter of credit to be phased in over a
13 two-year period beginning with initial occupancy in the facility.

14 (4) Each refund reserve trust fund shall be established at an
15 institution qualified to be an escrow agent pursuant to an agreement
16 between the provider and the institution based on this section and
17 approved in advance by the department.

18 (5) The amount to be held in the reserve fund shall be ~~the total~~
19 ~~of the amounts calculated with respect to each individual resident~~
20 ~~as follows:~~ *actuarially sound and sufficient to pay refund liabilities*
21 *as they become due, as specified by the commissioner by*
22 *regulation.*

23 ~~(A) Determine the age in years and the portion of the entry fee~~
24 ~~for the resident refundable for the seventh year of residency and~~
25 ~~thereafter.~~

26 ~~(B) Determine life expectancy of that individual from the life~~
27 ~~expectancy table in paragraph (1) of subdivision (b) of Section~~
28 ~~1792.2. If there is a couple, use the life expectancy for the~~
29 ~~individual with the longer life expectancy.~~

30 ~~(C) For that resident, use an interest rate of 6 percent or lower~~
31 ~~to determine from compound interest tables the factor which~~
32 ~~represents the amount required today to grow at compound interest~~
33 ~~to one dollar (\$1) at the end of the period of the life expectancy~~
34 ~~of the resident.~~

35 ~~(D) Multiply the refundable portion of the resident's entry fee~~
36 ~~amount by the factor obtained in subparagraph (C) to determine~~
37 ~~the amount of reserve required to be maintained.~~

38 ~~(E) The sum of these amounts with respect to each resident shall~~
39 ~~constitute the reserve for refundable contracts.~~

1 ~~(F) The reserve for refundable contracts will be revised annually~~
2 ~~as provided for in subdivision (a), using the interest rate, refund~~
3 ~~obligation amount, and individual life expectancies current at that~~
4 ~~time.~~

5 (6) Withdrawals may be made from the trust fund to pay refunds
6 when due under the terms of the refundable entry fee contracts
7 and when the balance in the trust fund exceeds the required refund
8 reserve amount determined in accordance with paragraph (5) of
9 subdivision (b).

10 (7) Deposits shall be made to the trust fund with respect to new
11 residents when the entry fee is received and in the amount
12 determined with respect to that resident in accordance with
13 paragraph (5) of subdivision (b).

14 (8) Additional deposits shall be made to the trust fund within
15 30 days of any annual reporting date on which the trust fund
16 balance falls below the required reserve in accordance with
17 paragraph (5) of subdivision (b) and such deposits shall be in an
18 amount sufficient to bring the trust fund balance into compliance
19 with this section.

20 (c) Any provider which has executed refundable contracts in a
21 continuing care retirement community prior to January 1, 1996,
22 and which has not executed refundable contracts in a continuing
23 care retirement community prior to January 1, 1991, shall submit,
24 for the department's approval, a method of determining a refund
25 reserve to be held in trust for the residents. Approved methods
26 include any of the following:

27 (1) The establishment, at the time continuing care contracts are
28 signed, of a reserve fund in trust for the full amount of the refunds
29 promised.

30 (2) The purchase from an insurance company, authorized to do
31 business in the State of California, of fully paid life insurance
32 policies for the full amount of the refunds promised.

33 (3) A method approved by the American Academy of Actuaries
34 in their Actuarial Standards of Practice Relating to Continuing
35 Care Retirement Communities, which method provides for fully
36 funding the refund obligations in a separate trust fund as provided
37 in subdivision (b).

38 (d) Any provider offering a refundable contract, or other entity
39 assuming responsibility for refundable contracts prior to January
40 1, 1991, shall maintain a refund reserve bank account in trust for

1 the residents as described in subdivision (b) except that the amount
2 of refund reserves shall be calculated based on the following
3 assumptions and methods of calculation:

4 (1) The continuing care retirement community will no longer
5 receive entry fee income after a period of 40 years following the
6 commencement of operation.

7 (2) Approved long-term investments, such as treasury notes,
8 will earn 3 percent more than the rate of inflation.

9 (3) Entrance fees will increase at the rate of inflation.

10 (4) Land values will increase at the rate of inflation.

11 (5) Investments in the refund reserve trust will increase at the
12 rate for approved long-term investments.

13 (6) Calculate the number of units to be resold each year at the
14 approved rate of turnover.

15 (7) Determine the mean entrance fee, as of the current date.

16 (8) Determine the factor for inflating the mean entrance fee at
17 the rate of 3 percent below the interest rate on new 30-year treasury
18 bonds, for each year from the current date to the 40th year of
19 operation, or until all units have been turned over.

20 (9) Calculate the inflated mean entrance fees for the 40th year
21 and for each preceding year, until all units have been turned over.

22 (10) Multiply the inflated mean entrance fee for the 40th year,
23 and each preceding year, as specified in paragraph (9), by the
24 annual turnover, as specified in paragraph (6), until the total of the
25 annual turnovers used in the calculations equals the total number
26 of units in the continuing care retirement community.

27 (11) The projected refund liability shall be the sum of the
28 products obtained pursuant to paragraph (10), multiplied by the
29 rate of refund for the seventh year of residency, specified by current
30 continuing care contracts, multiplied by the percentage of current
31 continuing care contracts which specify this rate of refund. The
32 projected refund liability amount shall be calculated for each rate,
33 if existing continuing care contracts specify several rates.

34 (12) The projected refund liability, or the aggregate of these
35 liabilities, if several rates are obtained pursuant to paragraph (11),
36 may be reduced by the value of the land used for the continuing
37 care retirement community, inflated to the 40th year of operation,
38 as determined pursuant to paragraph (4), if the provider agrees to
39 a lien pursuant to Section 1793.15 to secure this commitment.

1 (13) Calculate the present value of the projected refund liability
2 at the current rate of interest for new 30-year treasury bonds. The
3 result is the required refund reserve.

4 (e) Any entity which holds a certificate of authority, provisional
5 certificate of authority, or permit to sell deposit subscriptions on
6 or before September 23, 1986, shall be exempted from the refund
7 reserve requirement established by this section, if the entity has
8 an equity balance of five times the amount of the refund reserves
9 calculated pursuant to subdivision (c).

10 (1) The equity balance shall be verified by one or more of the
11 following means:

12 (A) The “stockholders’ equity,” or equivalent amount, as
13 reflected on the most recent Form 10K (which may be on a
14 consolidated basis or on a consolidated and combined basis) filed
15 with the Securities and Exchange Commission.

16 (B) The “total fund balance of net worth,” or equivalent amount,
17 as reflected on Form 990 or Form 990-PF filed with the Internal
18 Revenue Service.

19 (C) The “total net worth,” or equivalent amount, as reflected
20 on the most recent Form 109 filed with the Franchise Tax Board.

21 (2) The amount of the requirement for the equity balance shall
22 be revised annually pursuant to this section.

23 (3) Compliance shall be based on review, by the department,
24 of financial statements prepared in accordance with generally
25 accepted accounting principles, accompanied by an unqualified
26 opinion by a certified public accountant.

27 (4) If the equity balance is determined by the department to be
28 less than the required amount, the provider or other entity assuming
29 responsibility shall deposit, in a form satisfactory to the department,
30 an amount equal to the refund reserve required within 60 days.

31 (f) All continuing care retirement communities offering
32 refundable entrance fees that are not secured by cash reserves,
33 except those facilities that were issued a certificate of authority
34 prior to May 31, 1995, shall clearly disclose this fact in all
35 marketing materials and continuing care contracts.

36 *SEC. 40. Section 1793.6 of the Health and Safety Code is*
37 *amended to read:*

38 1793.6. (a) The department may issue citations pursuant to
39 this section containing orders of abatement and assessing civil
40 penalties against any entity that violates Section 1771.2 or 1793.5.

1 ~~(b)~~

2 (1) If upon inspection or investigation, the department has
3 probable cause to believe that an entity is violating Section 1771.2
4 or 1793.5, the department may issue a citation to that entity. Each
5 citation shall be in writing and shall describe with particularity the
6 basis of the citation. Each citation shall contain an order of
7 abatement. In addition to the administrative fines imposed pursuant
8 to Section 1793.27, an entity that violates the abatement order shall
9 be liable for a civil penalty in the amount of two hundred dollars
10 (\$200) per day for violation of the abatement order.

11 ~~(e)~~

12 (2) The civil penalty authorized in ~~subdivision (b)~~ *paragraph*
13 *(1)* shall be imposed if a continuing care retirement community is
14 operated without a provisional certificate of authority or certificate
15 of authority and the operator refuses to seek a certificate of
16 authority or the operator seeks a certificate of authority and the
17 application is denied and the operator continues to operate the
18 continuing care retirement community without a provisional
19 certificate of authority or certificate of authority, unless other
20 remedies available to the department, including prosecution, are
21 deemed more appropriate by the department.

22 ***(b) The State Department of Social Services may recommend***
23 ***that the department issue a citation against a provider based on***
24 ***a violation of any of the provisions of this chapter administered***
25 ***by the State Department of Social Services.***

26 ***(1) The department may issue a citation against a provider that***
27 ***is recommended by the State Department of Social Services***
28 ***pursuant to this subdivision.***

29 ***(2) Each citation issued pursuant to this subdivision shall be in***
30 ***writing and shall describe with particularity the basis of the***
31 ***citation. Each citation shall contain an order of abatement. In***
32 ***addition to the administrative fines imposed pursuant to Section***
33 ***1793.27, an entity that violates the abatement order shall be liable***
34 ***for a civil penalty in the amount of two hundred dollars (\$200)***
35 ***per day for violation of the abatement order.***

36 ~~(d)~~

37 (c) Service of a citation issued under this section may be made
38 by certified mail at the last known business address or residence
39 address of the entity cited.

40 ~~(e)~~

1 (d) Within 15 days after service of a citation under this section,
2 an entity may appeal in writing to the department with respect to
3 the violations alleged, the scope of the order of abatement, or the
4 amount of civil penalty assessed.

5 ~~(f)~~

6 (e) If the entity cited fails without good cause to appeal in
7 writing to the department within 15 business days after service of
8 the citation, the citation shall become a final order of the
9 department. The department may extend the 15-day period for
10 good cause, to a maximum of 15 additional days.

11 ~~(g)~~

12 (f) If the entity cited under this section makes a timely appeal
13 of the citation, the department shall provide an opportunity for a
14 hearing. The department shall thereafter issue a decision, based
15 on findings of fact, affirming, modifying, or vacating the citation
16 or directing other appropriate relief. The proceedings under this
17 section shall be conducted in accordance with the provisions of
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division
19 3 of Title 2 of the Government Code, and the department shall
20 have all the powers granted therein.

21 ~~(h)~~

22 (g) After exhaustion of the review procedures specified in this
23 section, the department may apply to the appropriate superior court
24 for a judgment in the amount of the civil penalty and an order
25 compelling the cited entity to comply with the order of abatement.
26 The application, which shall include a certified copy of the final
27 order of the department shall be served upon the cited entity who
28 shall have five business days to file that entity's response in writing
29 in the superior court. This period may be extended for good cause.
30 Failure on the part of the cited entity to respond shall constitute
31 grounds for entry of a default judgment against that entity. In the
32 event a response is timely filed in superior court, the action shall
33 have priority for trial over all other civil matters.

34 ~~(i)~~

35 (h) Notwithstanding any other provision of law, the department
36 may waive part or all of the civil penalty if the entity against whom
37 the civil penalty is assessed satisfactorily completes all the
38 requirements for, and is issued, a provisional certificate of authority
39 or certificate of authority.

40 ~~(j)~~

(i) Civil penalties recovered pursuant to this section shall be deposited into the Continuing Care Provider Fee Fund.

SEC. 41. Section 1793.7 of the Health and Safety Code is amended to read:

1793.7. A permit to accept deposits, a provisional certificate of authority, or a certificate of authority shall be forfeited by operation of law when any one of the following occurs:

(a) The applicant terminates marketing for the proposed continuing care retirement community.

(b) The applicant or provider surrenders to the department its ~~residential care facility for the elderly license~~, the permit to accept deposits, provisional certificate of authority, or certificate of authority for a continuing care retirement community.

(c) ~~The applicant or provider surrenders to the State Department of Social Services its residential care facility for the elderly license.~~

~~(e)~~

(d) The applicant or provider sells or otherwise transfers all or part of the continuing care retirement community.

~~(d)~~

(e) A change occurs in the majority ownership of the continuing care retirement community or the certificate of authority holder.

~~(e)~~

(f) The applicant or provider merges with another entity.

~~(f)~~

(g) The applicant or entity makes a material change in a pending application which requires a new application pursuant to subdivision (c) of Section 1779.8.

~~(g)~~

(h) The applicant or provider moves the continuing care retirement community from one location to another without the department's prior approval.

~~(h)~~

(i) The applicant or provider abandons the continuing care retirement community or its obligations under the continuing care contracts.

~~(i)~~

(j) The applicant or provider is evicted from the continuing care retirement community premises.

SEC. 42. Section 1793.8 of the Health and Safety Code is amended to read:

1 1793.8. A Certificate of Authority shall be automatically
2 inactivated when a provider voluntarily ceases to enter into
3 continuing care contracts with new residents. The provider shall
4 notify the department *and the State Department of Social Services*
5 of its intention to cease entering into continuing care contracts and
6 shall continue to comply with all provisions of this chapter until
7 all continuing care contract obligations have been fulfilled.

8 *SEC. 43. Section 1793.13 of the Health and Safety Code is*
9 *amended to read:*

10 1793.13. (a) The department may require a provider to submit
11 a financial plan, if either of the following applies:

12 (1) A provider fails to file a complete annual report as required
13 by Section 1790.

14 (2) The department has reason to believe that the provider is
15 insolvent, is in imminent danger of becoming insolvent, is in a
16 financially unsound or unsafe condition, or that its condition is
17 such that it may otherwise be unable to fully perform its obligations
18 pursuant to continuing care contracts.

19 (b) A provider shall submit its financial plan to the department
20 within 60 days following the date of the department's request. The
21 financial plan shall explain how and when the provider will rectify
22 the problems and deficiencies identified by the department.

23 (c) The department shall approve or disapprove the plan within
24 30 days of its receipt.

25 (d) If the plan is approved, the provider shall immediately
26 implement the plan.

27 (e) If the plan is disapproved, or if it is determined that the plan
28 is not being fully implemented, the department may, after
29 consultation with and upon consideration of the recommendations
30 of the ~~Continuing Care Advisory Committee~~ *State Department of*
31 *Social Services*, ~~consult with its financial consultants to develop~~
32 a corrective action plan at the provider's expense, or require the
33 provider to obtain new or additional management capability
34 approved by the department to solve its difficulties. A reasonable
35 period, as determined by the department, shall be allowed for the
36 reorganized management to develop a plan which, subject to the
37 approval of the department ~~and after review by the committee~~,
38 will reasonably assure that the provider will meet its responsibilities
39 under the law.

1 SEC. 44. Section 1793.21 of the Health and Safety Code is
2 amended to read:

3 1793.21. The department, in its discretion, may condition,
4 suspend, or revoke any permit to accept deposits, provisional
5 certificate of authority, or certificate of authority issued under this
6 chapter if it finds, *in consultation with the State Department of*
7 *Social Services where appropriate*, that the applicant or provider
8 has done any of the following:

9 (a) Violated this chapter or the rules and regulations adopted
10 under this chapter.

11 (b) Aided, abetted, or permitted the violation of this chapter or
12 the rules and regulations adopted under this chapter.

13 (c) Had a license suspended or revoked pursuant to the licensing
14 provisions of Chapter 2 (commencing with Section 1250) or
15 Chapter 3.2 (commencing with Section 1569).

16 (d) Made a material misstatement, misrepresentation, or fraud
17 in obtaining the permit to accept deposits, provisional certificate
18 of authority, or certificate of authority.

19 (e) Demonstrated a lack of fitness or trustworthiness.

20 (f) Engaged in any fraudulent or dishonest practices of
21 management in the conduct of business.

22 (g) Misappropriated, converted, or withheld moneys.

23 (h) After request by the department *or the State Department of*
24 *Social Services* for an examination, access to records, or
25 information, refused to be examined or to produce its accounts,
26 records, and files for examination, or refused to give information
27 with respect to its affairs, or refused to perform any other legal
28 obligations related to an examination.

29 (i) Manifested an unsound financial condition.

30 (j) Used methods and practices in the conduct of business so as
31 to render further transactions by the provider or applicant hazardous
32 or injurious to the public.

33 (k) Failed to maintain at least the minimum statutory reserves
34 required by Section 1792.2.

35 (l) Failed to maintain the reserve fund escrow account for
36 prepaid continuing care contracts required by Section 1792.

37 (m) Failed to comply with the refund reserve requirements stated
38 in Section 1793.

39 (n) Failed to comply with the requirements of this chapter for
40 maintaining escrow accounts for funds.

1 (o) Failed to file the annual report described in Section 1790.

2 (p) Violated a condition on its permit to accept deposits,
3 provisional certificate of authority, or certificate of authority.

4 (q) Failed to comply with its approved financial and marketing
5 plan or to secure approval of a modified plan.

6 (r) Materially changed or deviated from an approved plan of
7 operation without the prior consent of the department.

8 (s) Failed to fulfill his or her obligations under continuing care
9 contracts.

10 (t) Made material misrepresentations to depositors, prospective
11 residents, or residents of a continuing care retirement community.

12 (u) Failed to submit proposed changes to continuing care
13 contracts prior to use, or using a continuing care contract that has
14 not been previously approved by the department.

15 (v) Failed to diligently submit materials requested by the
16 department *or the State Department of Social Services* or required
17 by the statute.

18 *SEC. 45. Section 1793.23 of the Health and Safety Code is*
19 *amended to read:*

20 ~~1793.23. (a) The department shall consult with and consider~~
21 ~~the recommendations of the Continuing Care Advisory Committee~~
22 ~~prior to conditioning, suspending, or revoking any permit to accept~~
23 ~~deposits, provisional certificate of authority, or certificate of~~
24 ~~authority.~~

25 ~~(b) The~~

26 *1793.23. (a) A provider shall have a right of to appeal a*
27 *suspension, condition, or revocation imposed pursuant to Section*
28 *1793.21 to the department. The proceedings shall be conducted in*
29 *accordance with Chapter 5 (commencing with Section 11500) of*
30 *Part 1 of Division 3 of Title 2 of the Government Code, and the*
31 *department shall have all of the powers granted therein. A*
32 *suspension, condition, or revocation shall remain in effect until*
33 *completion of the proceedings in favor of the provider. In all*
34 *proceedings conducted in accordance with this section, the standard*
35 *of proof to be applied shall be by a preponderance of the evidence.*

36 ~~(e)~~

37 *(b) The department may, upon finding of changed circumstances,*
38 *in consultation with the State Department of Social Services where*
39 *appropriate, remove a suspension or condition.*

1 *SEC. 46. Section 1793.31 of the Health and Safety Code is*
2 *amended to read:*

3 1793.31. (a) The district attorney of every county may, upon
4 application by the department, *the State Department of Social*
5 *Services, or its the* authorized representative of either of those
6 *departments,* institute and conduct the prosecution of any action
7 for violation of this chapter within his or her county.

8 (b) This chapter shall not limit or qualify the powers of the
9 district attorney to institute and conduct the prosecution of any
10 action brought for the violation within his or her county of this
11 chapter or any other provision of law, including, but not limited
12 to, actions for fraud or misrepresentation.

13 (c) The department *or the State Department of Social Services*
14 shall provide access to any records in its control on request of a
15 district attorney and shall cooperate in any investigation by a
16 district attorney.

17 *SEC. 47. Section 1793.32 is added to the Health and Safety*
18 *Code, to read:*

19 1793.32. (a) *A provider's officers, directors, trustees and any*
20 *persons who have authority in the management of the provider's*
21 *funds, shall not do any of the following, unless otherwise provided*
22 *in this chapter:*

23 (1) *Receive any money or valuable thing for negotiating,*
24 *procuring, recommending or aiding in, any purchase by or sale*
25 *to the provider of any property, or any loan from the provider.*

26 (2) *Be pecuniarily interested as principal, coprincipal, agent,*
27 *attorney, or beneficiary in any purchase, sale, or loan described*
28 *in paragraph (1).*

29 (3) *Directly or indirectly purchase, or be interested in the*
30 *purchase of, any of the assets of the provider.*

31 (b) *This section shall not apply to:*

32 (1) *The purchase or exchange of stock of a provider by a*
33 *provider or between providers nor to any merger, consolidation*
34 *or corporate reorganization of those providers, nor to the officers,*
35 *directors, trustees or any persons having authority in the*
36 *management of the providers' funds in respect to that transaction,*
37 *if all of the following requirements are met:*

38 (A) *The transaction is just and reasonable as to the providers*
39 *involved at the time it is authorized or approved.*

1 (B) No officer, director, trustee, or other person having authority
2 in the management of the providers' funds receives any money or
3 other valuable thing, other than his or her usual compensation for
4 his or her regular duties, for negotiating, procuring,
5 recommending, or aiding in the transaction.

6 (C) One of the following requirements are met:

7 (i) Any interest in the transaction on the part of any officers,
8 directors, trustees, or persons who have authority in the
9 management of the provider's funds is disclosed or known to its
10 board of directors or committee, authorizing, approving, or
11 ratifying the transaction, and noted in the minutes thereof, and
12 the board or committee authorizes, approves, or ratifies the
13 transaction in good faith by a vote sufficient for the purpose
14 without counting the vote or votes of any interested officers,
15 directors, trustees, or persons who have authority in the
16 management of the funds of the provider.

17 (ii) The fact of the interest in the transaction is disclosed or
18 known to the shareholders in the case of a corporation, and in the
19 case of an equity project to the residents holding an equity interest,
20 and they approve or ratify the transaction in good faith by a vote
21 or written consent of a majority of the shares and residents entitled
22 to vote, unless the consent or vote of more than a majority is
23 otherwise required, in which event the vote or written consent shall
24 be that so otherwise required.

25 Any officer, director, trustee, or other person who has an interest
26 in the transaction may be counted in determining the presence of
27 a quorum at any meeting that authorizes, approves, or ratifies the
28 transaction.

29 (2) Any transaction relating to a provider if the transaction
30 meets the other requirements of subdivision (b) and the officers,
31 directors, and trustees of the provider do not in the aggregate own
32 more than 5 percent of the stock of any corporation with which
33 the provider is entering into a transaction.

34 (3) Any transaction if prior to its consummation the provider
35 has applied for and obtained from the commissioner a certificate
36 of exemption in respect to the specific transaction therein described
37 and that transaction is consummated in conformity with the
38 certificate and the representations and disclosures made in or in
39 connection with the application therefor. To obtain the certificate
40 of exemption, the provider shall file with the commissioner a

1 written application, accompanied by a filing fee of two hundred
2 ninety-five dollars (\$295). This application shall be verified as
3 provided in Section 834 of the Insurance Code, be in a form that
4 the commissioner requires, and shall contain all of the following:

5 (i) A specific description of the particular transaction for which
6 the certificate is sought.

7 (ii) Copies of all contracts and other legal documents involved
8 or to be involved in the transaction.

9 (iii) A description of all assets involved in the transaction.

10 (iv) The names, titles, capacities and business relationships of
11 all persons in any way involved in the transaction who are
12 connected with the provider or any of its affiliates, officers,
13 directors, managers, or controlling persons or entities in any of
14 the capacities described in this section.

15 (v) A description of any and all considerations on either or any
16 side of the transaction.

17 (vi) Evidence that its governing board has specifically
18 authorized the filing of the application.

19 (vii) Any other information, opinions, or matters that the
20 commissioner may require.

21 The commissioner may issue the certificate of exemption if he
22 or she finds, with or without a hearing, that the transaction is fair,
23 just, and equitable and not hazardous to residents, stockholders,
24 or creditors. The commissioner may impose conditions, including,
25 but not limited to, disclosure of the circumstances and terms of
26 the transaction either before or after its consummation either
27 publicly or to persons and entities that he or she designates and
28 the approval of the transaction by the persons or entities he or she
29 designates. He or she may also require that a report of the
30 transaction be filed with him or her subsequent to its consummation
31 in a form and containing information that he or she prescribes.

32 The certificate of exemption issued pursuant to this paragraph
33 shall only exempt the transaction from the prohibitions of this
34 section and shall not affect the rights or remedies of any persons
35 under any other law.

36 (c) Whenever it appears to the commissioner that any provider,
37 or any director, officer, employee, or agent thereof, has committed
38 or is about to commit a violation of this section, the commissioner
39 may apply to the superior court for the county in which the
40 principal office of the provider is located, or if the provider does

1 *not have an office in this state, then to the Superior Court for the*
2 *County of Los Angeles, or for the City and County of San*
3 *Francisco, for an order enjoining the provider, or the director,*
4 *officer, employee, or agent thereof, from violating or continuing*
5 *to violate this section, and for such other equitable relief as the*
6 *nature of the case and the interests of the provider's residents,*
7 *creditors, and shareholders or the public may require.*

8 *SEC. 48. Section 1793.33 is added to the Health and Safety*
9 *Code, to read:*

10 *1793.33. The financial obligation of any officer, director,*
11 *trustee, or other person having authority in the management of a*
12 *provider's funds shall not be guaranteed by the provider in any*
13 *capacity, and any such guarantee shall be void.*

14 *SEC. 49. Section 1793.34 is added to the Health and Safety*
15 *Code, to read:*

16 *1793.34. Whenever a provider is injured or made to suffer loss*
17 *by reason of any violation of the provisions of Section 1793.32,*
18 *1793.33, or 1793.35, the provider may recover from the guilty*
19 *officer, director, trustee or other person, or any one or more of*
20 *them jointly or severally damages sufficient to compensate the*
21 *provider for that loss.*

22 *SEC. 50. Section 1793.35 is added to the Health and Safety*
23 *Code, to read:*

24 *1793.35. A provider shall not make any loan to any officer,*
25 *director, trustee, or other person having authority in the*
26 *management of its funds, nor shall that officer, director, trustee,*
27 *or other person accept that loan.*

28 *SEC. 51. Section 1793.36 is added to the Health and Safety*
29 *Code, to read:*

30 *1793.36. The commissioner may from time to time require any*
31 *domestic provider to report to him or her, in such detail as he or*
32 *she may prescribe, the moneys and securities owned by it, the place*
33 *where those moneys and securities are deposited and, in the case*
34 *of moneys and securities deposited outside the state, the reason*
35 *for maintaining each deposit outside the state.*

36 *Whenever the commissioner, after hearing following notice,*
37 *finds that those moneys or securities are maintained on deposit*
38 *outside the state in excess of legal requirements and of the*
39 *reasonable needs of the business of the provider, he or she may*
40 *order the provider to transfer to, and maintain in, this state money*

1 *and securities to the extent of such excess and to cease, pending*
2 *such transfer, from unnecessary transfers of moneys and securities*
3 *from this state to any place outside this state.*

4 SEC. 52. *Section 1793.50 of the Health and Safety Code is*
5 *amended to read:*

6 1793.50. (a) The department, after consultation with the
7 Continuing Care Advisory Committee *and the State Department*
8 *of Social Services*, may petition the superior court for an order
9 appointing a qualified administrator to operate a continuing care
10 retirement community, and thereby mitigate imminent crisis
11 situations where elderly residents could lose support services or
12 be moved without proper preparation, in any of the following
13 circumstances:

14 (1) The provider is insolvent or in imminent danger of becoming
15 insolvent.

16 (2) The provider is in a financially unsound or unsafe condition.

17 (3) The provider has failed to establish or has substantially
18 depleted the reserves required by this chapter.

19 (4) The provider has failed to submit a plan, as specified in
20 Section 1793.13, the department has not approved the plan
21 submitted by the provider, the provider has not fully implemented
22 the plan, or the plan has not been successful.

23 (5) The provider is unable to fully perform its obligations
24 pursuant to continuing care contracts.

25 (6) The residents are otherwise placed in serious jeopardy.

26 (b) The administrator may only assume the operation of the
27 continuing care retirement community in order to accomplish one
28 or more of the following: rehabilitate the provider to enable it fully
29 to perform its continuing care contract obligations; implement a
30 plan of reorganization acceptable to the department; facilitate the
31 transition where another provider assumes continuing care contract
32 obligations; or facilitate an orderly liquidation of the provider.

33 (c) With each petition, the department shall include a request
34 for a temporary restraining order to prevent the provider from
35 disposing of or transferring assets pending the hearing on the
36 petition.

37 (d) The provider shall be served with a copy of the petition,
38 together with an order to appear and show cause why management
39 and possession of the provider's continuing care retirement
40 community or assets should not be vested in an administrator.

1 (e) The order to show cause shall specify a hearing date, which
2 shall be not less than five nor more than 10 days following service
3 of the petition and order to show cause on the provider.

4 (f) Petitions to appoint an administrator shall have precedence
5 over all matters, except criminal matters, in the court.

6 (g) At the time of the hearing, the department shall advise the
7 provider and the court of the name of the proposed administrator.

8 (h) If, at the conclusion of the hearing, including such oral
9 evidence as the court may consider, the court finds that any of the
10 circumstances specified in subdivision (a) exist, the court shall
11 issue an order appointing an administrator to take possession of
12 the property of the provider and to conduct the business thereof,
13 enjoining the provider from interfering with the administrator in
14 the conduct of the rehabilitation, and directing the administrator
15 to take steps toward removal of the causes and conditions which
16 have made rehabilitation necessary, as the court may direct.

17 (i) The order shall include a provision directing the issuance of
18 a notice of the rehabilitation proceedings to the residents at the
19 continuing care retirement community and to other interested
20 persons as the court may direct.

21 (j) The court may permit the provider to participate in the
22 continued operation of the continuing care retirement community
23 during the pendency of any appointments ordered pursuant to this
24 section and shall specify in the order the nature and scope of the
25 participation.

26 (k) The court shall retain jurisdiction throughout the
27 rehabilitation proceeding and may issue further orders as it deems
28 necessary to accomplish the rehabilitation or orderly liquidation
29 of the continuing care retirement community in order to protect
30 the residents of the continuing care retirement community.

31 *SEC. 53. Section 1793.58 of the Health and Safety Code is*
32 *amended to read:*

33 1793.58. (a) The department, *State Department of Social*
34 *Services*, administrator, or any interested person, upon due notice
35 to the administrator, at any time, may apply to the court for an
36 order terminating the rehabilitation proceedings and permitting
37 the provider to resume possession of the provider's property and
38 the conduct of the provider's business.

39 (b) The court shall not issue the order requested pursuant to
40 subdivision (a) unless, after a full hearing, the court has determined

1 that the purposes of the proceeding have been fully and successfully
2 accomplished and that the continuing care retirement community
3 can be returned to the provider's management without further
4 jeopardy to the residents of the continuing care retirement
5 community, creditors, owners of the continuing care retirement
6 community, and to the public.

7 (c) Before issuing any order terminating the rehabilitation
8 proceeding the court shall consider a full report and accounting
9 by the administrator regarding the provider's affairs, including the
10 conduct of the provider's officers, employees, and business during
11 the rehabilitation and the provider's current financial condition.

12 (d) Upon issuance of an order terminating the rehabilitation,
13 the department shall reinstate the provisional certificate of authority
14 or certificate of authority. The department may condition, suspend,
15 or revoke the reinstated certificate only upon a change in the
16 conditions existing at the time of the order or upon the discovery
17 of facts which the department determines would have resulted in
18 a denial of the request for an order terminating the rehabilitation
19 had the court been aware of these facts.

20 *SEC. 54. Section 1793.60 of the Health and Safety Code is*
21 *amended to read:*

22 1793.60. (a) If at any time the department determines that
23 further efforts to rehabilitate the provider would not be in the best
24 interest of the residents or prospective residents, or would not be
25 economically feasible, the department may, ~~with the approval of~~
26 ~~the Continuing Care Advisory Committee~~, apply to the court for
27 an order of liquidation and dissolution or may apply for other
28 appropriate relief for dissolving the property and bringing to
29 conclusion its business affairs.

30 (b) Upon issuance of an order directing the liquidation or
31 dissolution of the provider, the department shall revoke the
32 provider's provisional certificate of authority or certificate of
33 authority.

34 *SEC. 55. Section 1793.62 of the Health and Safety Code is*
35 *amended to read:*

36 1793.62. (a) The department, *State Department of Social*
37 *Services*, administrator, or any interested person, upon due notice
38 to the parties, may petition the court for an order terminating the
39 rehabilitation proceedings when the rehabilitation efforts have not
40 been successful, the continuing care retirement community has

1 been sold at foreclosure sale, the provider has been declared
2 bankrupt, or the provider has otherwise been shown to be unable
3 to perform its obligations under the continuing care contracts.

4 (b) The court shall not issue the order requested pursuant to
5 subdivision (a) unless all of the following have occurred:

6 (1) There has been a full hearing and the court has determined
7 that the provider is unable to perform its contractual obligations.

8 (2) The administrator has given the court a full and complete
9 report and financial accounting signed by the administrator as
10 being a full and complete report and accounting.

11 (3) The court has determined that the residents of the continuing
12 care retirement community have been protected to the extent
13 possible and has made such orders in this regard as the court deems
14 proper.

15 *SEC. 56. Section 14006.01 of the Welfare and Institutions Code*
16 *is amended to read:*

17 14006.01. (a) This section applies to any individual who is
18 residing in a continuing care retirement community, as defined in
19 paragraph ~~(11)~~ (12) of subdivision (c) of Section 1771 of the Health
20 and Safety Code, pursuant to a continuing care contract, as defined
21 in paragraph ~~(8)~~ (9) of subdivision (c) of Section 1771 of the Health
22 and Safety Code, or pursuant to a life care contract, as defined in
23 subdivision (l) of Section 1771 of the Health and Safety Code, that
24 collects an entrance fee from its residents upon admission.

25 (b) In determining an individual's eligibility for Medi-Cal
26 benefits, the individual's entrance fee shall be considered a resource
27 available to the individual if all of the following apply:

28 (1) The individual has the ability to use the entrance fee, or the
29 contract provides that the entrance fee may be used, to pay for care
30 if other resources or income of the individual are insufficient to
31 pay for care.

32 (2) The individual is eligible for a refund of any remaining
33 entrance fee when he or she dies or terminates his or her contract
34 with, and leaves, the continuing care retirement community.

35 (3) The entrance fee does not confer an ownership interest in
36 the continuing care retirement community.

37 (c) This section shall be implemented pursuant to the
38 requirements of Title XIX of the federal Social Security Act (42
39 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant

1 to that act, and only to the extent required by federal law, and only
2 to the extent that federal financial participation is available.

3 (d) To the extent that regulations are necessary to implement
4 this section, the department shall promulgate regulations using the
5 nonemergency regulatory process described in Article 5
6 (commencing with Section 11346) of Chapter 3.5 of Part 1 of
7 Division 3 of the Government Code.

8 (e) It is the intent of the Legislature that the provisions of this
9 section shall apply prospectively to any individual to whom the
10 act applies commencing from the date regulations adopted pursuant
11 to this act are filed with the Secretary of State.

12 *SEC. 57. Section 14139.3 of the Welfare and Institutions Code*
13 *is amended to read:*

14 14139.3. (a) Pilot project sites may be comprised of a single
15 county, a multicounty unit, or a subcounty unit.

16 (b) Each selected site shall do all of the following:

17 (1) Establish a consolidated long-term care services fund that
18 shall accommodate state and federal fiscal and auditing
19 requirements, shall be used solely for the purposes described in
20 this article, and shall not be used for any county pooled investment
21 fund.

22 (2) Identify a local entity, that may be either a governmental
23 entity or a not-for-profit private agency, to administer the fund.
24 The local entity may be one that already exists, or may be
25 established for the express purpose of administering the fund. This
26 agency shall be designated as the long-term care services agency
27 and shall contract with the department to carry out this article.

28 (3) Develop and provide to the department an administrative
29 action plan that shall include, but is not limited to:

30 (A) A complete description of the covered scope of services
31 and programs to be integrated.

32 (B) A complete description of the proposed long-term care
33 delivery system and how it will improve system efficiency and
34 enhance service quality.

35 (C) Demonstration of a willingness and commitment by the
36 long-term care services agency to work with local community
37 groups, providers, and consumers to obtain their input.

38 (D) Proposed measurable performance outcomes that the pilot
39 program is designed to achieve.

1 (E) A description of the expected impact on current program
2 services to Medi-Cal eligible beneficiaries and consumers of
3 non-Medi-Cal services included in the integrated system.

4 (F) Assurance of minimal disruption to current recipients of
5 long-term care services during the phase-in of the pilot project.

6 (G) Reasonable assurance that services provided will be
7 responsive to the religious, cultural, and language needs of
8 beneficiaries.

9 (H) Assurances that providers who serve the needs of special
10 populations such as religious and cultural groups or residents of
11 multilevel facilities as defined in paragraph (9) of subdivision (d)
12 of Section 15432 of the Government Code and ~~community~~
13 *continuing* care retirement communities as defined in subdivision
14 ~~(a)~~ (c) of Section 1771 of the Health and Safety Code, will be able
15 to continue to serve those persons when willing to contract under
16 the same terms and conditions as similar providers.

17 (I) Specific alternative concepts, requirements, staffing patterns,
18 or methods for providing services under the pilot project.

19 (J) A process to assure that Medi-Cal dollars are appropriately
20 expended in accordance with federal requirements.

21 (K) A description of how the pilot project site will maintain
22 adequate fiscal control and ensure quality of care for beneficiaries.

23 (L) A description of how the pilot project site will coordinate,
24 relate to, or integrate with Medi-Cal managed care plans, local
25 managed care plans, and other organizations which provide services
26 not part of the pilot project.

27 (M) A proposed timeline for planning and startup of the pilot
28 project.

29 (N) An estimate of costs and savings.

30 (O) Demonstration of the financial viability of the plan.

31 (c) The administrative action plan shall reflect a planning
32 process that includes long-term care consumers, their families, and
33 organizations that represent them, organizations that provide
34 long-term care services, and representatives of employees who
35 deliver direct long-term care services. The planning process may
36 include, but is not limited to, the members of the local advisory
37 committee required pursuant to Section 14139.31.

38 (d) The administrative action plan shall receive the approval of
39 the county board of supervisors before it is submitted to the
40 department for final state approval. The board of supervisors shall

1 present evidence of the commitment to the administrative action
2 plan of all publicly funded agencies that currently serve consumers
3 who will be eligible under the pilot project, and all publicly and
4 nonpublicly funded agencies that will be responsible for providing
5 services under the pilot project. This evidence may include
6 resolutions adopted by agency governing bodies, memoranda of
7 understanding, or other agreements pertinent to the implementation
8 of the plan.

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